

CATA
CLEVELAND ACADEMY
OF TRIAL ATTORNEYS

Winter 2024-2025

News

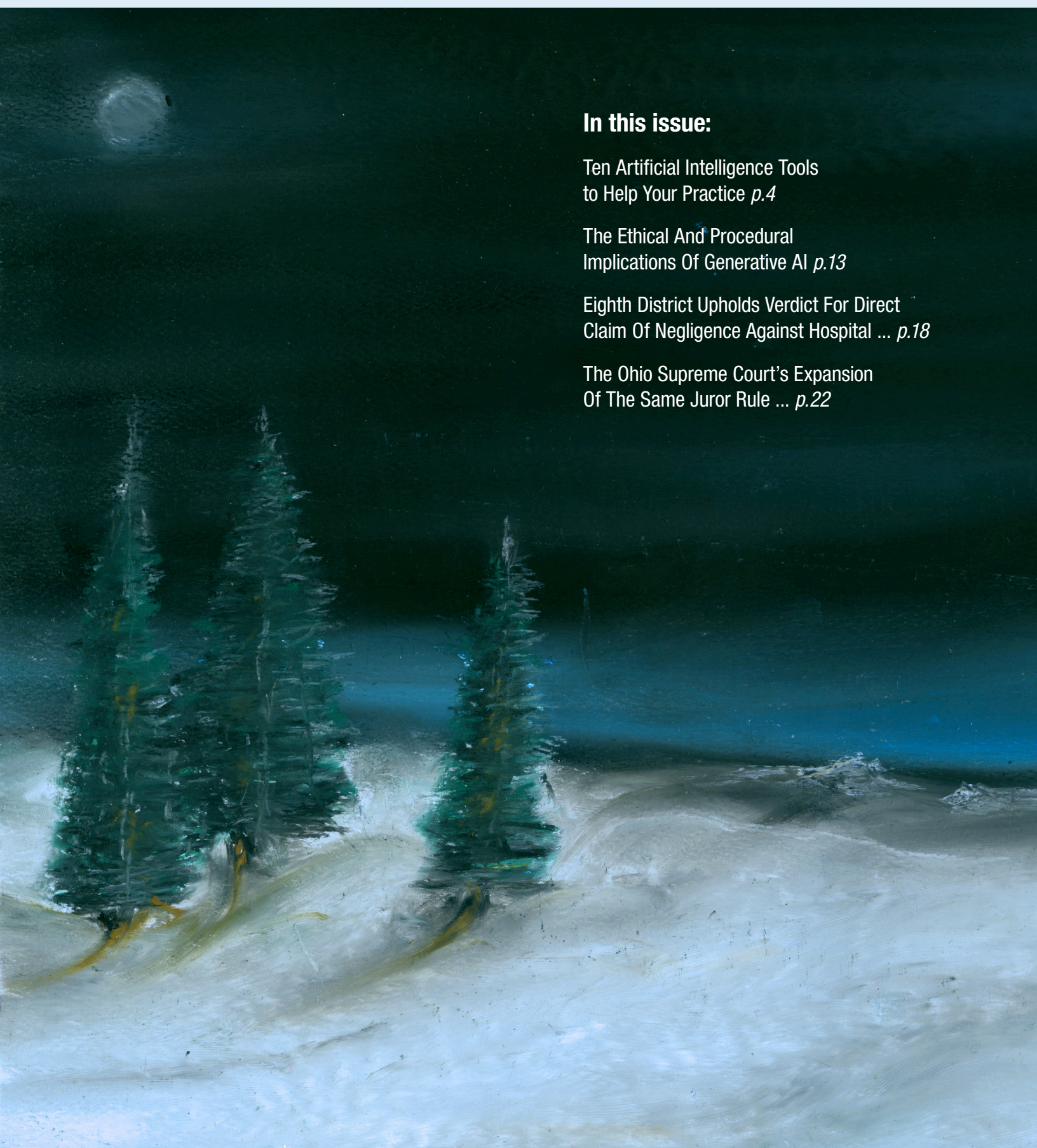
In this issue:

Ten Artificial Intelligence Tools
to Help Your Practice *p.4*

The Ethical And Procedural
Implications Of Generative AI *p.13*

Eighth District Upholds Verdict For Direct
Claim Of Negligence Against Hospital ... *p.18*

The Ohio Supreme Court's Expansion
Of The Same Juror Rule ... *p.22*





YOUR TRUSTED ADVISOR FOR:

Structured Settlements
Trust Services
Taxable Damages

Our Services

- Settlement Consulting
 - Life Care Plan Analysis
 - Attend Mediations
 - Client Planning Meetings
 - Structured Attorneys' Fees
- Trust Services
 - Settlement Protection Trusts
 - Special Needs Trusts
 - Minor's Master Trusts
 - Adult Master Trusts
- Continuing Education
- Case Management Pre- and Post-Resolution
 - Prepare Settlement Agreements
- Capacity To Handle Any Case Size
- Appointed With All Markets

You want your clients to know all their options at settlement.

Let our experts help to develop a personalized plan to suit those unique individuals' needs.



MICHAEL W. GOODMAN, ESQ., CSSC

Past President of the National Structured Settlement Trade Association (NSSTA)

800-229-2228

mgoodman@nfp.com
www.nfpstructures.com

21887 Lorain Road, Suite 309
Cleveland, OH 44126

CONTENTS

- 2 **President’s Message** by Scott M. Kuboff
- 4 **Ten Artificial Intelligence Tools To Help Your Practice** by Thomas P. Ryan
- 13 **The Ethical And Procedural Implications Of Generative AI** by Brenda M. Johnson
- 16 **Clawson Fix Went Into Effect October 24, 2024** by Kyle B. Melling
- 18 **Eighth District Upholds Verdict For Direct Claim of Negligence Against Hospital For "Inadequate Notification Policies" After Hospital Failed To Notify Patient About Blood Infection** by Nicholas A. DiCello and Dustin B. Herman
- 22 **The Ohio Supreme Court’s Expansion Of The Same Juror Rule – And Other Issues To Remember When It Comes To Jury Interrogatories**
by Brenda M. Johnson
- 25 **Pointers From The Bench: An Interview With Judge Michelle J. Sheehan: A Legal Luminary With Heart** by Marilena DiSilvio
- 27 **In Memoriam: Christopher M. DeVito**
- 28 **Beyond The Practice: CATA Members In The Community** by Dana M. Paris
- 29 **ANNOUNCEMENTS – WINTER 2024-2025**
- 30 **A Photo Montage: 2024 Annual Dinner**
- 31 **Pointers From The Bench: An Interview With Judge Kelly Ann Gallagher**
by Ellen Hobbs Hirshman
- 33 **An Update On FSHCAA, The Federal Medical Malpractice Law** by Louis E. Grube
- 35 **Do Parents Have A Claim For Loss Of Filial Consortium Due To Injuries Suffered By Their Adult Child?** by Colin R. Ray
- 38 **Verdict Spotlight: *Estate of Thomas Wonders v. Southwest General Health Center, et al.***
- 40 **Verdict Spotlight: *John Remali, et al. v. University Hospitals Health System, et al.***
- 41 **Recent Ohio Appellate Decisions** by Brian W. Parker and Louis E. Grube
- 48 **Verdicts & Settlements**
- 57 **CATA’s 17th Anniversary “SKI” L.E. Litigation at Sunrise Announcement**

ADVERTISERS IN THIS ISSUE

Copy King, Inc.	3
CW Settlements.....	Back
NFP Structured Settlements	Inside Front
Tackla Court Reporting, LLC.....	15
Video Discovery, Inc.	3

Opinions expressed in the articles herein are those of the authors and are not necessarily shared by CATA.

Cover design by Mary Szabados (drawing) and Joanna Eustache (design execution).

Scott M. Kuboff
President

Dustin B. Herman
Vice President

Colin B. Ray
Secretary

Katie R. Harris
Treasurer

Directors

Marilena DiSilvio

William B. Eadie

John Fouché

Sara J. Gelsomino

Louis E. Grube

Todd E. Gurney

Dustin Herman

Ellen Hobbs Hirshman

Kyle B. Melling

Dana M. Paris

Susan E. Petersen

Thomas P. Ryan

Ashlie Case Sletvold

Kathleen J. St. John

Heather L. Thomas

Adeladi Williams

Kyle Wright

James J. Zink

Editor

Kathleen J. St. John

Designer

Joanna Eustache, Copy King

Design Support

Lillian S. Rudy,

Nurenberg, Paris

clevelandtrialattorneys.org

Past Presidents:

Dana M. Paris
Meghan P. Connolly
Adeladi Williams
Todd E. Gurney
William B. Eadie
Christian R. Patno
Cathleen M. Bolek
Rhonda Baker Debevec
Kathleen J. St. John
Ellen Hobbs Hirshman
George E. Loucas
Samuel V. Butcher
John R. Liber II
Brian Eisen
W. Craig Bashein
Stephen T. Keefe, Jr.
Mark E. Barbour
Donna Taylor-Kolis
Romney B. Cullers
Dennis R. Landsdowne
Michael F. Becker
Kenneth J. Knabe
David M. Paris
Frank G. Bolmeyer
Robert F. Linton, Jr.
Jean M. McQuillan
Richard C. Alkire
William Hawal
David W. Goldense
Robert E. Matyjasik
Laurie F. Starr
William M. Greene
James A. Lowe
Paul M. Kaufman
John V. Scharon, Jr.
Scott E. Stewart
Joseph L. Coticchia
Sheldon L. Braverman
William J. Novak
Peter H. Weinberger
Alfred J. Tolaro
Fred Wendel III
John V. Donnelly
Michael R. Kube
Frank K. Isaac
Seymour Gross
Lawrence E. Stewart
Milton Dunn
F. M. Apicella
Fred Weisman
Franklin A. Polk
Albert J. Morhard
George Lowy
Eugene P. Krent
Walter L. Greene
T.D. McDonald
Ralph A. Miller
Nathan D. Rollins
Harold Sieman
Michael T. Gavin
Richard M. Cerrezin
Joseph O. Coy
Robert R. Soltis
James J. Conway



Scott M. Kuboff is a partner at Lowe Scott Fisher Co., LPA. He can be reached at 440.226.3566 or email skuboff@lsflaw.com.

President's Message

by Scott M. Kuboff

Anxious. Worried. Concerned.

The closer we get to November 5, the stronger these feelings become and the harder they are to shake. By all accounts, the ballots cast in Georgia, North Carolina, Pennsylvania, Michigan, Wisconsin, Nevada, and Arizona will determine the outcome and the future of our nation. At least, I hope the outcome is determined at the ballot box.

Already, the Supreme Court of the United States is being asked to weigh in on the Pennsylvania Supreme Court's decision in *Genser v. Butler County Board of Elections*. This is a case involving whether people may cast a provisional ballot after they were notified their mail-in ballot was defective for failing to place it in a secrecy envelope. The *Genser* court ruled in favor of counting the provisional ballots. If SCOTUS takes up the case, the decision could tip the scales of a razor-thin election. If recent history tells us anything, I am sure *Genser* will not be the only case that impacts the election.

Regardless of your party affiliation, we should all be concerned about the influence partisan politics has on the integrity of justice and our courts. The Constitution calls on the judiciary for fairness, honesty, and impartiality. Partisanship sows seeds of bias, influence, and works to erode

the public trust. It is regrettable that Ohio has inserted partisanship into the highest level of our judiciary as party-label has nothing to do with a candidate's qualifications, experience, and judgment.

However, even against this backdrop, there are opportunities for trial lawyers to bolster the integrity of the judicial system. Through the people we represent, counsel we oppose, judges we appear before, and juries we encounter, we can promote truth, instill confidence, and seek justice. Through our work in the courtroom, we have the power to change our communities, state, and country, one case at a time.

Through your knowledge and experience, you also have the ability to make a positive impact in CATA. Tom Ryan did just that. For the past few months, CATA has been experiencing a host of IT issues: *CATA News* not displaying on our website, our Events calendar went down, and our list-serv stopped functioning. At the September board meeting, Tom volunteered for the IT Task Force and got to work. Leaning into his prior experience as a software developer and technology consultant, Tom immediately identified the issue with our list-serv and got it running. While there is still work to be done, Tom is leading CATA out of the IT abyss.

Looking ahead, we have some exciting ways to get involved in 2025. Immediate Past President, Dana Paris, is organizing the 17th Anniversary “SKI” L.E. on January 22nd, 23rd, and 24th, at the Cliff Lodge at Snowbird. CLEs will be offered each morning in-person and via Zoom. More information can be found at <https://clevelandtrialattorneys.org/events>.

We are also in the early stages of planning an AI Summit, where we will explore how emerging technologies like artificial intelligence are shaping the future of the practice of law.

Finally, Dustin Herman has introduced a plan to host a trial coaching program for law students at Case, Cleveland State, and Akron. This presents an excellent opportunity for CATA to give back to the legal community and encourage law students to consider plaintiffs' work as a career path. The Board will remain committed to putting this plan into action in early spring, after trial team competitions conclude. If you are interested in helping in any way, please let us know. ■

Editor's Note: As is obvious from the text, the President's Message was completed prior to the election.

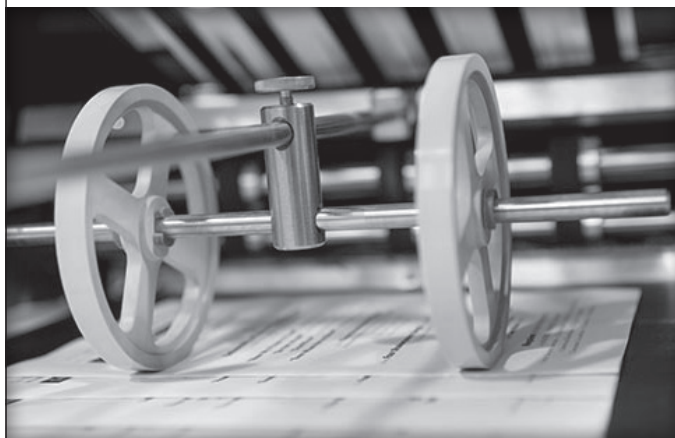


COPY KING

On Time, On Demand

**Your Source for Complete
Printing and Mailing Services:**

Graphic Design • Digital & Offset Printing • Mailing Services



**Visit: 3333 Chester Ave Email: sales@copy-king.com
Call: 216.861.3377 Web: www.copy-king.com**

*Certified CSB, FBE and LPE with the City of Cleveland
Certified SBE and WBE with Cuyahoga County*



Litigation Support Team

VIDEO DISCOVERY, INC.

Video Depositions
Trial Director™ Support
Multimedia Depositions
Day-In-the-Life Docs.
Settlement Videos
High-Res Playbacks

Exhibit Boards
Digital Photography
Interactive Timelines
2D & 3D Animation
Medical Illustration
Focus Group Presentation

14245 CEDAR ROAD, CLEVELAND, OH 44121
p. 216.382.1043 f. 216.382.9696
www.videodiscoveryinc.com



Thomas P. Ryan is an attorney practicing in Cleveland, Ohio with a focus on personal injury, medical malpractice, and wrongful death matters. He is also a certified software developer and creates custom software solutions. He is passionate about leveraging technology and the use of AI to streamline legal processes and enhance client advocacy. He can be reached at 216-363-6028 or TPR@RYANLLP.COM.

Ten Artificial Intelligence Tools To Help Your Practice

by Thomas P. Ryan

Generative Artificial Intelligence has quickly become the latest buzzword in the legal field. Much like the early days of the internet, when each new website promised to be a game-changer, AI is now billed as a transformative force in legal practice management, research, and client interactions. Yet, beyond the hype, practical AI tools are available today that genuinely streamline processes, enhance accuracy, and give attorneys a competitive edge.

For plaintiff attorneys who often juggle extensive documentation, complex medical records, and evolving case law, AI can transform how their practices operate. By automating routine tasks and delivering advanced insights, these tools free up time for attorneys to focus on what matters most: client service and trial preparation. In this article, we'll cover ten AI-driven tools that are particularly valuable in personal injury law and can help attorneys work smarter, not harder.

Below is a list of tools designed to make your work more efficient and effective, ranging from beginner-friendly to moderately advanced. While you may be familiar with some, these tools work best when used in combination. Remember, no single tool fits every need, and as with any legal resource, it's crucial to verify the quality and accuracy of AI-generated outputs.

1. Adobe Acrobat Professional

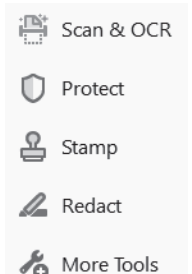


While this application is well-known and likely used daily by most lawyers, the professional version offers essential features that allow you to safely utilize other AI tools. Most notably, Acrobat provides simple functionality to search and redact protected information (e.g. name, date of birth, SSN, etc.). It can also search and redact across multiple files, allowing you to batch process files in preparation for use with ChatGPT, Claude, or any other chat application. Adobe also has an add-in that allows you to chat with your documents directly without using ChatGPT, Claude, Gemini, etc.

Most AI tools require documents to be machine readable. If the documents you are attempting to use are either scanned or have portions that are not rendered correctly, then the Acrobat Tool Scan & OCR can fix your issue. The tool can process a single file or many files at the same time. The Redact tool will then allow you to remove any private or privileged information, making the file ready for AI review.

Cost: \$20.00/month

URL: <https://www.adobe.com/acrobat.html>



2. Google Workspace/Gemini



Google Workspace markets itself as “a comprehensive suite of cloud-based productivity and collaboration tools,” including Gmail, Drive, Docs, Sheets, and Calendar, all designed to enhance workplace efficiency through seamless integration and user-friendly functionality. Google’s next-generation AI model, Gemini, now integrates directly into this ecosystem, offering advanced AI capabilities that work with Workspace’s familiar interface.

For paid Google Workspace subscribers, Gemini AI provides distinct advantages. One of Gemini’s strengths lies in its ability to adapt to your writing style, making it a powerful tool for drafting legal documents, contracts, and client communications in your preferred tone and legal terminology. It can generate initial drafts, suggest relevant legal language, and adapt to nuanced preferences, helping ensure that your communications are precise, professional, and consistent.

Gemini can integrate with other Google products by enabling the Workplace Extensions in the Gemini settings. Once enabled, Gemini can access your Drive and assist in organizing and analyzing case data, making it easy to locate files or extract information across documents stored in your Workspace. Gemini can also scan documents such as deposition transcripts and police reports to highlight key statements, summarize lengthy documents, or even flag inconsistencies within the record—all within Google Drive.

Gemini can also integrate with Google Calendar, giving a new level of control over scheduling and case management. Gemini can suggest meeting times, prioritize deadlines, and even notify you of potential conflicts based on your upcoming commitments. By leveraging Gemini’s capabilities within the Google Workspace ecosystem, plaintiff attorneys can streamline workflows, boost productivity, and elevate the quality and precision of their legal work. Integrating AI into familiar tools not only optimizes time but also enables attorneys to focus more on strategic aspects of client advocacy and trial preparation.

Cost: \$6.00 - \$18.00 per user, per month

URL: <https://gemini.google.com/>
<https://workspace.google.com/>

3. Lexis+/Westlaw Edge AI



Both Lexis+ AI and Westlaw Edge benefit from being trained on proprietary legal datasets that include case law, statutes, and other authoritative legal documents. This focused training helps reduce hallucination errors, which occur when an AI generates information

that is not grounded in the available data. Many attorneys may be reluctant to use AI to perform research because of some of the fabricated case law that was presented to courts and got attorneys into hot water. These services reduce these concerns by utilizing trusted and well-curated legal resources. The training on high-quality legal data means that Lexis and Westlaw’s AI tools provide a more dependable foundation for legal research and analysis, minimizing the risks associated with AI-generated misinformation.

Lexis+ AI is a generative AI tool designed to help attorneys streamline legal research and enhance their workflow. It integrates sophisticated AI features like Lexis Answers, which allows users to ask natural language questions and receive direct answers, as well as related documents, statutes, and case law. Another feature is Brief Analysis, where users can upload documents, and the AI suggests related cases, legal arguments, or identifies weaknesses. This ensures comprehensive coverage and helps strengthen arguments. For plaintiff attorneys, Lexis+ AI can be particularly useful during the early stages of a case, when broad legal research is necessary. The AI’s ability to produce accurate and insightful results in response to natural language queries can help attorneys efficiently identify relevant precedents and summarize key arguments. Lexis+ typically offers subscription-based pricing, which varies depending on the scope of access required. AI-enhanced features may come as part of premium tiers, so it is recommended to discuss specific needs with a LexisNexis representative.

Westlaw Edge and Westlaw Precision are Thomson Reuters’ response to the demand for AI in legal practice. Westlaw Edge introduced WestSearch Plus, which enhances the search experience by predicting user needs and offering direct answers to

legal questions. The platform also includes Quick Check, where attorneys can upload briefs or legal documents, and the AI analyzes the text to identify relevant but potentially overlooked authorities. This feature can be particularly helpful for spotting weaknesses in opposing counsel's arguments or suggesting better precedents. Westlaw Precision focuses on refining search results and providing deeper context for legal analysis. Plaintiff attorneys can leverage these tools to expedite their research process, ensure the accuracy of citations, and gain insights into opposing counsel's strategies. The Litigation Analytics feature, which provides data-driven insights into judges, courts, and opposing counsel, is another key addition that can help shape case strategies. Westlaw Edge and Westlaw Precision are also subscription-based, with pricing depending on the features and extent of usage. Generally, advanced AI features like Quick Check are included in higher-tier subscription models, making it important for firms to assess their usage needs to determine value.

Costs: Custom Per Usage and Features

URL: <https://www.lexisnexis.com/en-us>
<https://legal.thomsonreuters.com/en/products/westlaw-precision>

4. Perplexity AI



Perplexity AI is an innovative AI-powered search and answer engine that utilizes advanced language models to deliver precise and contextually relevant information. Tailored to comprehend complex queries, Perplexity provides direct answers by synthesizing data from a multitude of sources, including legal documents, case law,

statutes, and regulatory materials. It also has a browser plugin that allows users to search an entire domain using AI, which can be beneficial when you are looking for publicly available policies and procedures of a corporate defendant.

One of the standout features of Perplexity is its natural language processing capabilities, which allow attorneys to pose detailed legal questions in plain English. The platform then generates concise, accurate responses, often accompanied by citations and references for deeper exploration. This functionality enables users to quickly gather insights on specific legal issues, precedents, or statutory interpretations that are crucial for building a strong case.

Perplexity has immediate access to the internet and continuously learns and adapts from user interactions. This is useful for those using online marketing or if you want to update your LinkedIn profile. This adaptive learning ensures that the answers provided become increasingly tailored to the specific practice areas and interests of the attorney. Integrating Perplexity into a law firm's workflow can significantly enhance productivity and decision-making processes. By streamlining legal research and providing quick access to comprehensive information, plaintiff attorneys can focus more on strategy development and client advocacy. Leveraging the power of Perplexity's AI-driven insights not only improves efficiency but also contributes to delivering higher-quality legal services to clients.

Cost: Pro Version is \$20/month.

URL: <https://www.perplexity.ai/>

5. NotebookLM



NotebookLM, developed by Google, is a powerful AI-driven note-taking tool designed to assist professionals, including attorneys, by leveraging the power of machine learning. It acts as an AI-enhanced notebook that can help users summarize, synthesize, and navigate complex topics across documents. Think of Evernote with the added AI capabilities. By integrating with Google Docs, NotebookLM allows users to interact more intelligently with their notes, transforming passive documents into an active source of information that can answer questions, provide insights, and assist in knowledge building. It can synthesize intelligent responses across all of your sources, with up to fifty uploaded documents and a maximum 500,000 words per source.¹

In addition to taking notes, NotebookLM allows you to ask questions across some or all of the uploaded sources. For example, you can upload redacted medical records from several hospitals for a given patient and ask it to summarize the patient's care.²

Sources

- Select all sources
- AutopsyReport.pdf
- MetroHealth medical ...
- UH Parma medical re...

Can you summarize what happened to this patient?

This is a summary of the patient's medical history based on the provided medical records.

- **A patient presented to the emergency department (ED) with chest pain and sweating.** The patient's primary care physician had advised them to go to the ED. At the time of the visit, the patient denied having any symptoms. ^{1 2}
- The patient had a history of hypertension, hyperlipidemia, and tobacco use. ²
- The patient's vital signs in the ED were within the normal range. ³ An electrocardiogram (EKG) showed no signs of acute ischemia or infarction. ⁴
- The patient's troponin level was elevated. ⁵
- The patient was admitted to the hospital for observation. ⁶
- A chest x-ray was obtained, and there was concern for possible aortic tortuosity. ⁷ A computed tomography angiogram (CTA) was done to rule out dissection, which was negative. ^{7 8}
- The patient's other laboratory results were within normal limits. ^{5 9}
- The patient remained chest pain-free and asymptomatic while in the ED. ^{1 2}
- The patient was discharged home with instructions to follow up with their primary care physician and to return to the ED if symptoms recurred. ²

NotebookLM also allows you to quickly create a Briefing Document that can be used to summarize a case and to quickly find the important portions of your documents. For example, you can upload a medical chart and ask NotebookLM to locate an operative report or to identify the pages in the record where specific lab tests were documented.

The service also allows you to create a timeline of events that occurred across all the separate records. It will allow up to fifty separate sources of information.

Cost: Free. Business Edition and Pricing in Development

URL: <https://notebooklm.google.com>

6. ChatGPT



ChatGPT, developed by OpenAI, is a cutting-edge language model that has transformed the way professionals engage with artificial intelligence. For plaintiff attorneys, ChatGPT offers a range of features that can significantly enhance legal practice by streamlining tasks, improving efficiency, and providing valuable insights.

ChatGPT's newest features include their o1-preview and GPT-4o with Canvas. Their o1-preview uses chain-of-thought reasoning, which their Chief Product Officer claims can write full draft legal briefs.³ Chain-of-thought reasoning refers to the step-by-step process of thinking that both humans and advanced AI models use to solve complex problems or answer intricate questions. In the context of artificial intelligence, particularly language models like ChatGPT, chain-of-thought reasoning allows the AI to break down a problem into smaller, more manageable parts, reasoning through each step to arrive at a coherent and accurate conclusion.

For AI models, implementing chain-of-thought reasoning involves generating intermediate reasoning steps that lead to the final answer. Instead of providing an immediate response based solely on pattern recognition, the model internally deliberates by considering various facets of the query. This method enhances the AI's ability to handle tasks that require logical deduction, mathematical calculations, or understanding of nuanced concepts.

The Canvass feature allows a user to create a working output that you can query, update, and modify to the level of intelligence of the end-reader. Previously, if you wanted to change one paragraph of a ten-paragraph output, you would need to ask ChatGPT to rewrite all ten paragraphs, even though you only needed a minor change. The Canvass feature allows you to specify where in the output you want changed and then rewrite only that section.

For example, using these two newest features, a user can upload a police report (after running through Adobe for OCR) and give a prompt to write a draft complaint for the facts listed in the report.⁴

What can I help with?

GetReport.pdf
PDF

"I am a Plaintiffs attorney in Ohio. I need to create a first draft of a complaint in word format. Can you review this police report and draft a first draft of this complaint for me?" Please change the names of the parties to protect their identity because I am going to publish this in a trade journal. The name of the Plaintiff should be John Smith and the name of the Defendant should be Sally Rogers.

x

🔒
📄
👁️
🎁
⬆️

🖼️ Create image

📄 Summarize text

👁️ Analyze images

🎁 Surprise me

More

ChatGPT will examine the information you have provided and begin the chain-of-thought reasoning process to attempt to complete the given task. The more input and clearer the task, the better the output will be, but even a very short task and limited input will still generate usable results:

📄
✎
ChatGPT 4o with canvas

GetReport.pdf
PDF

"I am a Plaintiffs attorney in Ohio. I need to create a first draft of a complaint in word format. Can you review this police report and draft a first draft of this complaint for me?" Please change the names of the parties to protect their identity because I am going to publish this in a trade journal. The name of the Plaintiff should be John Smith and the name of the Defendant should be Sally Rogers.

I'll create a first draft of a complaint in Word format using the details from the police report, with the names modified as requested. The plaintiff will be named John Smith, and the defendant will be named Sally Rogers. Let me prepare that for you.

Smith Vs Rogers Complaint

I've drafted the complaint based on the police report details, with the names changed as requested. Please let me know if you need any edits or additional details added to the document.

🔒
📄
👍
🗨️

Message ChatGPT

ChatGPT can make mistakes. Check important info.

✕
Smith Vs Rogers Complaint

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

JOHN SMITH, Plaintiff,

v.

SALLY ROGERS, Defendant.

CASE NO.: [To Be Assigned]

JUDGE: [To Be Assigned]

COMPLAINT

Plaintiff John Smith, by and through counsel, files this Complaint against Defendant Sally Rogers and alleges as follows:

1. **Parties**
 - a. Plaintiff John Smith is an individual residing in Middleburg Heights, Ohio.
 - b. Defendant Sally Rogers is an individual residing in [Defendant's Address, City, Ohio].
2. **Jurisdiction and Venue**
 - a. Jurisdiction is proper in this Court pursuant to Ohio Revised Code § 2305.01, as the actions and omissions of the Defendant occurred in Cuyahoga County, Ohio.
 - b. Venue is proper in Cuyahoga County, Ohio, as the collision giving rise to this action occurred within Cuyahoga County, and Defendant resides in Ohio.
3. **Facts**
 - a. On or about May 17, 2023, at approximately 9:03 AM, Plaintiff John Smith was lawfully operating his vehicle southbound on Pearl Road (US-42) near the intersection with I-71 South entrance ramp in Middleburg Heights, Ohio.
 - b. At the same time, Defendant Sally Rogers was operating her vehicle northbound on Pearl Road in the left-turn-only lane at the intersection with I-71 South entrance ramp.
 - c. Traffic signals at the intersection were displaying a steady green signal, giving both Plaintiff and Defendant a lawful right to proceed, subject to yielding conditions for turning vehicles.
 - d. Defendant Sally Rogers, while attempting to make a left turn onto the I-71 South entrance ramp, failed to yield the right-of-way to Plaintiff John Smith and caused her vehicle to collide head-on with Plaintiff's vehicle.

On the left-hand side of the ChatGPT screen are the inputs and on the right hand side is the working document. If you want to ask a question about where the AI found this fact, you can highlight the text and ask “Where did you find this information?”

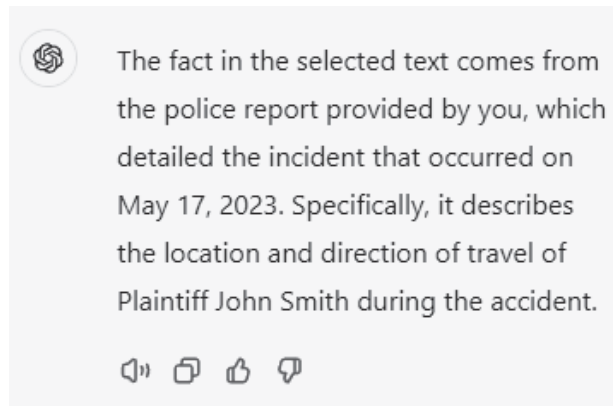
3. Facts

a. On or about May 17, 2023, at approximately 9:03 AM, Plaintiff John Smith was lawfully operating his vehicle southbound on Pearl Road (US-42) near the intersection with I-71 South entrance ramp in Middleburg Heights, Ohio.

b. At the same time, Defendant was driving northbound on Pearl Road in

Where did you find this information?

Within the left-hand side, ChatGPT will respond:



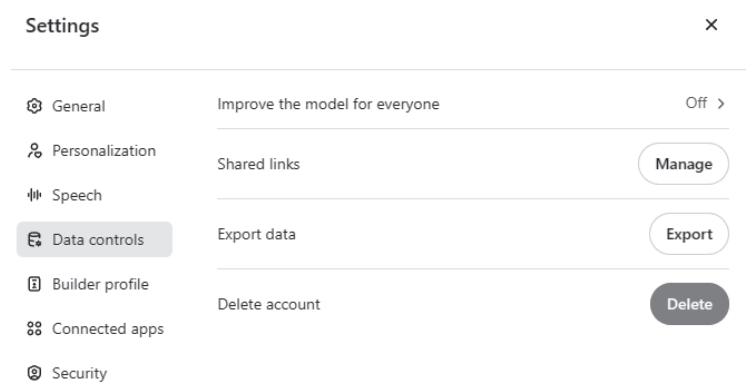
By incorporating chain-of-thought reasoning, Canvass significantly improves the quality of interactions between users and AI. It leads to more accurate and contextually appropriate responses and writing becomes more of an interactive process. Attorneys can leverage the model to generate initial drafts of pleadings, motions, contracts, and client correspondence. By inputting specific information and guidelines, such as case law obtained from Lexis/Westlaw above, ChatGPT produces well-structured documents that adhere to legal standards and terminology. This capability not only saves time but also ensures consistency and reduces the likelihood of errors.

Security and confidentiality are a common concern for attorneys using the ChatGPT service. You can minimize these concerns within your settings by modifying your data controls. Go to your Settings and then Data Controls and turn off the selection for “Improve the model for everyone.” Your data will not be used to train future models, but will remain within your account only.⁵

While there are numerous AI tools available to legal professionals, ChatGPT distinguishes itself through its advanced language processing capabilities, adaptability, and user-friendly interface. Its comprehensive features are designed to meet the multifaceted needs of plaintiff attorneys, making it a powerful solution for modern legal challenges. By incorporating ChatGPT into their workflow, attorneys can enhance their efficiency, reduce operational costs, and ultimately provide higher-quality services to their clients.

Cost: \$20/month per user

URL: <https://chatgpt.com/>



7. Claude



Claude is an AI assistant developed by Anthropic, a company founded by former OpenAI researchers, including Dario Amodei, who was previously the Vice President of Research at OpenAI. Anthropic was established with a focus on building safer and more controllable AI systems, aiming to address some of the ethical and safety concerns raised by the rapid development of AI technology. Anthropic's main investor is Amazon.

One of Claude's distinctive features is its side-by-side user interface called Artifacts, which enhances document interaction and modification capabilities. This interface allows legal professionals to upload and analyze multiple documents simultaneously, engage in real-time chat about document contents, and modify AI-generated outputs efficiently while maintaining clear visualization of source materials alongside AI analysis. This capability proves particularly valuable when working with complex legal documentation, as Claude excels at analyzing multiple documents to extract relevant information, identify patterns and inconsistencies, and generate summaries while preserving critical legal details.

As of October 2024, Claude has introduced a new feature enabling interaction with computer desktop environments. This functionality opens new possibilities for users, such as automated form completion using data from existing systems, integration with case management software, and processing of standardized legal documents. For example, firms can streamline workflows by automating HIPAA release form completion based on CRM data. However, firms should implement this feature with appropriate safeguards, including the use of dedicated virtual machines or containers, strict data access controls, and regular security audits, while maintaining human oversight for critical tasks.

Security remains a paramount concern for law firms handling sensitive client information, and Claude addresses this through robust features including non-persistent conversations between sessions, encrypted data transmission, and configurable access controls. These security measures align with legal industry standards while enabling firms to maintain client confidentiality and regulatory compliance.

In practical application, Claude enhances various aspects of legal practice, from document drafting and review to legal research and analysis, client communication preparation, and case strategy development. The system works best when integrated thoughtfully into existing legal workflows, serving as a sophisticated tool to augment attorney expertise rather than replace it. Its combination of advanced language processing, security features, and new desktop integration capabilities makes it particularly valuable for plaintiff attorneys managing complex caseloads.

Cost: \$20/month per user

URL: <https://claude.ai/>

8. ProPlaintiff.AI



If the services provided above are overwhelming, or if you are looking for a solution that will easily complete the common repetitive tasks in a plaintiff law firm, then ProPlaintiff can assist. This AI-powered tool provides a suite of resources aimed at streamlining processes such as case evaluation, document drafting, and the analysis of medical records and other evidence. ProPlaintiff integrates AI technologies to optimize workflows and reduce the manual burden of repetitive tasks, allowing attorneys to dedicate more time to client advocacy and strategic planning.

ProPlaintiff is particularly beneficial for handling large volumes of medical records or evidence in personal injury and medical malpractice cases. Attorneys can use the platform to automatically extract key information from medical documents, summarize deposition transcripts, and generate initial drafts of pleadings or other legal documents. For example, when dealing with a medical malpractice case, ProPlaintiff can quickly analyze and organize relevant medical data, helping attorneys identify key locations within the chart (such as an operative note), inconsistencies, or potential areas of liability. This not only saves time but also ensures that details are not missed in the process.

The platform also offers tools for case evaluation, helping attorneys determine the viability of potential cases by assessing

factors such as liability, damages, and the strength of the available evidence. This can be particularly helpful when dealing with a high volume of inquiries, as it allows firms to focus their resources on cases with the best chances of success.

Cost: \$100 - \$1,000/month depending on usage and subscription level

URL: <https://www.proplaintiff.ai>

9. Clear|brief

Clear|brief ClearBrief is an AI-powered tool designed to enhance the legal drafting process by integrating directly with Microsoft Word. It allows attorneys to upload and reference PDFs, such as evidence, deposition transcripts, or other key documents, while drafting briefs, motions, and other legal documents. This functionality makes ClearBrief especially helpful for litigation and appellate work, where the connection between claims and evidence must be clearly established and substantiated. By making it easier to reference and verify the accuracy of factual statements, ClearBrief helps attorneys produce more robust, factually supported documents.

One notable difference between ClearBrief and the other AI services is its ability to seamlessly integrate with Microsoft Word, allowing attorneys to work within their familiar drafting environment while easily accessing uploaded documents. This integration means that when attorneys draft a document, they can highlight a particular statement and link it directly to the supporting bates labeled page. This reduces time spent manually cross-referencing documents.

ClearBrief offers enhanced fact-checking capabilities and will also verify the accuracy of legal citations. Attorneys can use ClearBrief to quickly verify factual assertions or their case law directly within a motion or brief. The AI analyzes all uploaded documents and provides suggested citations for statements made in the draft. This reduces the likelihood of errors or unsupported claims and cuts down on the back-and-forth between the word processing program and the underlying source documents.

ClearBrief is particularly helpful when drafting motions that rely heavily on medical records, trial transcripts, or other extensive documentation. Appellate attorneys also benefit significantly from ClearBrief because it will allow quick citations to the record. With ClearBrief, attorneys can easily link to pages in the trial transcript or exhibits, ensuring their citations are precise and directly supported.

Beyond simple citation support, ClearBrief also helps improve the overall persuasiveness of legal documents. By making it easier to connect facts directly to authoritative sources, ClearBrief strengthens the credibility of the arguments being made. This functionality not only saves time but also enhances the persuasive impact of a document, which is crucial in contentious legal proceedings where every detail matters.

Cost: \$142/month

URL: <https://clearbrief.com>

10. Foundation AI



Foundation AI is a legal technology platform that focuses on transforming document processing and analysis through the power of artificial intelligence.

Designed to meet the unique needs of law firms and legal departments, Foundation AI provides automated tools that help attorneys efficiently extract key information from large sets of data, including medical records, audit trails, and other case-critical documents. This tool aims to simplify and streamline document management, allowing attorneys to focus on building their cases rather than getting bogged down in administrative work.

What sets Foundation AI apart is its automatic document processing and categorization. Foundation's software is written to automatically categorize documents and data from numerous mediums, whether they originate from your email, a text, or scanned paper records. If you receive new medical records from opposing counsel, Foundation will automatically categorize and suggest where to save the documents.

As with some of the other tools listed above, Foundation AI can also analyze thousands of pages of medical records, automatically extracting key information such as diagnoses, treatment timelines, and provider notes. This automation significantly reduces the administrative burden on legal teams while simultaneously improving accuracy and comprehensiveness of document review.

By integrating AI-driven automation into the document review process, Foundation AI significantly improves the efficiency and accuracy of managing case data from numerous sources. Attorneys can reduce the risk of overlooking important details and focus more on the legal analysis and strategic aspects of their cases. This is particularly important when dealing with voluminous records, where manual review would be both time-consuming and prone to human error.

Foundation AI offers a subscription-based pricing model, with various tiers depending on the level of access and features needed. The platform also provides a free trial for attorneys interested in exploring its capabilities. Its automated document extraction and cross-referencing features make Foundation AI a worthwhile investment for law firms that handle a significant volume of medical or technical documentation and want to streamline their workflow while maintaining accuracy.

Cost:

URL: <https://www.foundationai.com/>

Other Tools In The Mix

Beyond the tools reviewed above, several other promising options may interest plaintiff attorneys but were not available for full evaluation in this article.

- Supio (<https://www.supio.com/>) is designed specifically for plaintiff lawyers, streamlining documentation, drafting demand letters, and helping users quickly locate critical evidence in extensive records.
- JurySimulator (<https://jurysimulator.com/>) and JuryAnalyst (<https://juryanalyst.com/>) claim to create AI personalities for A/B testing arguments with potential jurors, which could aid in refining discovery and trial strategies. Access to these tools is currently by waitlist, but they may be valuable if they fulfill their claims.
- CaseMark (<https://www.casemark.com/>) and DodonAI (<https://www.dodon.ai/>) provide AI-powered, one-click solutions for personal injury firms, producing deposition summaries, medical chronologies, tax return summaries, and more. These platforms offer seamless Word and PDF integrations, enhancing workflows with actionable insights for the next best steps. ■

End Notes

1. Each source can contain up to 500,000 words, or up to 200MB for uploaded files. Each notebook can contain up to 50 sources. <https://support.google.com/notebooklm/answer/14276468?hl=en>
2. The data used in the NotebookLM example is for a fictitious patient using modified and redacted medical records.
3. <https://x.com/tsarnick/status/1847746829490016578> - OpenAI CPO Kevin Weil says their o1 model can now write legal briefs that previously were the domain of \$1000/hour associates: "what does it mean when you can suddenly do \$8000 of work in 5 minutes for \$3 of API credits?"
4. Example prompt: "I am a Plaintiff's attorney in Ohio. I need to create a first draft of a complaint in word format. Can you review this police report and draft a first draft of this complaint for me? Please change the names of the parties to protect their identity because I am going to publish this in a trade journal. The name of the Plaintiff should be John Smith and the name of the Defendant should be Sally Rogers". The AI service is capable of identifying the correct names just from the police report, but they were changed to keep the case anonymous.
5. OpenAI Terms of Use state you can opt out of training models. <https://openai.com/policies/row-terms-of-use/>. The Data Controls FAQ state the data will not be used for training, but will remain within your account for 30 days before it is permanently deleted. <https://help.openai.com/en/articles/7730893-data-controls-faq>



Brenda M. Johnson is a partner at Nurenberg, Paris, Heller & McCarthy Co., LPA. She can be reached at 216.694.5255 or bjohnson@nphm.com.

The Ethical And Procedural Implications Of Generative AI

by Brenda M. Johnson

Our first responsibility as lawyers is to provide competent representation to our clients.¹ Staying informed and abreast of the technologies that can aid us in our practice is a key element of this responsibility, which is why Thomas Ryan's article about some of the AI-driven tools available to plaintiff attorneys is so relevant and useful today. However, this duty requires us to consider not just the benefits of any new technology, but its risks as well, and to be aware of any ethical or procedural rules that might limit its use in practice.² This sidebar is intended to complement Thomas Ryan's article with a review of some of those issues.

Issue One – You Have To Check Their Work!

On July 29, 2024, the American Bar Association issued Formal Opinion 512 addressing the ethical issues posed by the use of generative AI in legal practice.³ State bar organizations have issued advisory opinions and guidelines on these issues as well, including those in Pennsylvania and Florida.⁴ One key concern highlighted in these opinions and guidelines has to do with the fact that generative AI carries with it an inherent risk of creating content that is either inaccurate or, in some cases, completely fabricated. As the ABA observed,

[Generative AI] tools are only as good as their data and related infrastructure. If the quality, breadth, and sources of the underlying data on which a GAI tool is trained are limited or outdated or reflect

biased content, the tool might produce unreliable, incomplete, or discriminatory results. In addition, the GAI tools lack the ability to understand the meaning of the text they generate or evaluate its context. Thus, they may combine otherwise accurate information in unexpected ways to yield false or inaccurate results.⁵

Because of this, generative AI tools have a propensity to generate what are referred to in the AI field as "hallucinations," which the ABA describes as "ostensibly plausible responses that have no basis in fact or reality."⁶

This propensity has significant implications for the field of legal research and writing, and, as many of us are likely already aware, can get a lawyer into trouble with the courts. An example that made the news in 2023 involved a plaintiff's attorney who relied on ChatGPT to do research for a pleading he submitted in a personal injury case that had been removed to federal court.⁷ ChatGPT provided the attorney with an analysis containing fabricated case citations, which the attorney then incorporated into his response to a motion to dismiss. When the district court judge asked the attorney to provide copies of the opinions cited in the pleading, the attorney asked ChatGPT for the opinions. ChatGPT responded by generating entire bogus opinions out of whole cloth, which the attorney then submitted to the court. Ultimately, the attorney was sanctioned under Rule 11, as was his local counsel. In another case from the same year, the

Second Circuit sanctioned an attorney for filing an appellate brief generated by ChatGPT that contained at least one spurious citation, and referred the attorney to the court's disciplinary panel for further investigation.⁸ In so doing, both courts made it abundantly clear that blindly relying on generative AI violates an attorney's duties under Rule 11.

These examples involved the use of ChatGPT, which is a general purpose generative AI tool, as opposed to generative AI tools designed specifically for legal research. But a recent study suggests that AI-driven legal research tools marketed by industry stalwarts such as Westlaw and Lexis generate inaccurate or "hallucinated" responses to queries as well, albeit with less frequency.⁹

So, put in more simple terms, generative AI is going to make mistakes. In that sense, as the Florida Bar noted in Formal Opinion 24-1, "lawyers who rely on generative AI for research, drafting, communication, and client intake risk many of the same perils as those who have relied on inexperienced or overconfident nonlawyer assistants."¹⁰ Thus, just as with the work of human assistants, a lawyer has an obligation under the Rules of Professional Conduct to verify any work or activity conducted with or through a generative AI tool to confirm that it is accurate and conforms to the lawyer's non-delegable duties to her clients, the courts, and to third parties.¹¹

Issue Two – Can You Trust It To Maintain Confidentiality?

The second key concern posed by generative AI has to do with confidentiality. Generative AI tools are algorithms built and trained on bodies of existing data, or language models, which they rely on and incorporate into their output. Also, if they are "self learning," they continue to develop from

the information their users give them. This means that generative AI carries with it an inherent risk that information given to it by its users will be disclosed in some form to other users.

Because of this, a lawyer who plans to use generative AI in a way that involves giving it access to a client's confidential information must fully evaluate the risks that come with the specific AI tool in question. As the ethics opinions on these issues have noted, however, the nature of generative AI and the evolving state of this technology can make this difficult to do. A closed-source tool can mitigate the risk, but each product works differently, and even when a generative AI tool is not accessible outside the particular law firm using it, there may still be a risk that information from one client's file might be disclosed improperly, either to other lawyers in the same firm or in materials intended for third parties.¹²

As a "baseline," the ABA advises reviewing a product's terms and policies as to who has access to information users input into the product, and consulting with relevant IT professionals as well, before integrating it into your practice.¹³ In addition, the potentially unmitigable risk of inadvertent disclosure led the ABA to conclude that informed consent is required from a client before a lawyer can input a client's confidential information into a generative AI tool.¹⁴ Other bar ethics opinions do not go as far as to require such consent, and the ABA opinion is not binding on any state disciplinary body. However, the ABA's position on this issue is, at the very least, a valuable resource in terms of determining what might constitute best practices in this area.

Issue Three – Does Your Court Allow It?

Finally, it is important to be aware that a number of courts and judges – both


in Ohio and throughout the country – have implemented local rules, standing orders, and case management orders addressing the use of generative AI in creating or editing documents that are to be filed with the court. The Hamilton County Court of Common Pleas, for instance, recently adopted a local rule requiring any document created with generative AI to be accompanied by a disclosure describing the technology used, its role in the document's preparation, and certifying that the attorney conducted a final review and approval of the document.¹⁵ Judge John J. Russo of the Cuyahoga County Court of Common Pleas now requires attorneys and pro se litigants to sign a certificate indicating that any AI-generated text in a filing will be reviewed by a human being before it is submitted to the court.¹⁶ And at least two Ohio federal district court judges – Judge Christopher Boyko of the Northern District, and Judge Michael J. Newman of the Southern District – have standing orders that bar the use of generative AI outright.¹⁷

As with the technology itself, the manner in which courts are dealing with its use is an issue still in development. At the very least, though, any attorney planning to integrate generative AI tools into her litigation practice should keep abreast of the implementation of such rules and orders, and should consider their implications. ■

End Notes

1. See Rule 1.1 of the Ohio Rules of Professional Conduct (Competence).
2. Rule 1.1 provides that "[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation *reasonably* necessary for the representation." Comment 8 to Rule 1.1, in turn, states that "[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology"
3. The opinion may be accessed here: <https://www.americanbar.org/news/abanews/>

- aba-news-archives/2024/07/aba-issues-first-ethics-guidance-aitools/ (last accessed November 6, 2024)
4. The Florida Bar's Board of Governors addressed these issues in an advisory opinion issued on January 19, 2024. See Florida Bar Ethics Advisory Opinion 24-1 (Opinion 24-1), which can be accessed at <https://www.floridabar.org/the-florida-bar-news/board-of-governors-adopts-ethics-guidelines-for-generative-ai-use/> (last accessed November 6, 2024). The Pennsylvania Bar Association and Philadelphia Bar Association teamed up to address them in a joint formal opinion issued on May 22, 2024. See Joint Formal Opinion 2024-200 (Opinion 2024-200), which can be accessed at <https://www.pabar.org/site/For-the-Public/Ethics-Opinions-Public> (last accessed November 6, 2024). Both of these opinions cover the relevant concerns in detail. Opinion 2024-200 also summarizes guidelines and recommendations that have been issued in other states, including New York, New Jersey, and Michigan. See Joint Formal Opinion 2024-200 at p. 7-8.
 5. ABA Formal Opinion 512, at p. 3 (citation footnotes omitted).
 6. ABA Formal Opinion 512, at p. 3 (citation footnote omitted).
 7. *Mata v. Avianca, Inc.*, 678 F. Supp.3d 443 (S.D.N.Y. 2023).
 8. *Park v. Kim*, 91 F.4th 610 (2d Cir. 2023).
 9. Varun Magesh, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning, & Daniel E. Ho, *Hallucination Free? Assessing the Reliability of Leading AI Research Tools*, STANFORD UNIVERSITY (June 26, 2024), accessible via pdf link at <https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries> (last accessed November 6, 2024). This study, which is currently under preprint review, showed that these providers' tools are more reliable than ChatGPT, but still produce incorrect information anywhere between 17% and 33% of the time. *Id.*
 10. See Opinion 24-1, "Oversight of Generative AI."
 11. As the Florida Bar noted, these include competence (RPC 1.1), avoiding frivolous claims or arguments (RPC 3.1), candor toward the tribunal (RPC 3.3), and refraining from making false statements of material fact to third parties (RPC 4.1).
 12. See ABA Formal Opinion 512, at p. 7-8.
 13. ABA Formal Opinion 512 at p. 7.
 14. *Id.* at p. 7.
 15. Hamilton Cty. Loc. R. 49, adopted effective May 21, 2024.
 16. A pdf of the certificate can be accessed at <https://cp.cuyahogacounty.gov/court-resources/judges/judge-john-j-russo/> (last accessed November 7, 2024).
 17. Judge Boyko's order can be accessed at <https://www.ohnd.uscourts.gov/content/judge-christopher-boyko> (last accessed November 7, 2024). Judge Newman's standing order, which is incorporated into his standing orders for both civil and criminal cases, can be accessed at <https://www.ohsd.uscourts.gov/FPNewman> (last accessed November 7, 2024)




Tackla
Court Reporting, LLC

Court Reporting & Videotaping
www.tacklacourtreporting.com


Court Reporting

- Real-Time Reporting
- E-Transcripts
- Linked Transcripts
- MINI Transcripts
- Interpreting Services
- Remote Depositions
- National Scheduling



Videotaping

- One or Two Camera Videotaping
- A-Day-In-The-Life Videotaping
- Video Equipment Rental
- Video Editing
- Remote Video Recording
- TrialPad Trial Presentation
- Synched Video



1020 Ohio Savings Plaza, 1801 East 9th Street, Cleveland, OH 44114
LOCAL: 216-241-3918 FAX: 216-241-3935



Kyle B. Melling is a partner with Lowe Eklund Wakefield Co., LPA. He can be reached at 216.781.2600 or kmelling@lewlaw.com.

Clawson Fix Went Into Effect

October 24, 2024

by Kyle B. Melling

In November 2022, the Ohio Supreme Court's decision in *Clawson v. Heights Chiropractic Physicians, LLC*,¹ sent shockwaves through the Ohio personal injury and specifically the medical malpractice bar. This ruling expanded the *National Union Fire Insurance Company v. Wuerth*² decision, establishing that vicarious liability claims involving malpractice could not proceed without a direct claim against the healthcare provider or attorney themselves. *Clawson* suggested that in order to establish a vicarious liability claim, it was now necessary to name *all* the individuals who were involved in the potential malpractice. This created a fear of potential legal malpractice liability, as it implied that an attorney might need to name all personnel involved in a patient's care—from physicians to janitorial staff—in order to also hold the healthcare providing entity vicariously liable.

To address this consequence, thanks to a herculean effort by members of our Ohio Association for Justice, the Ohio General Assembly passed House Bill 179. Governor DeWine signed it into law July 24, 2025. It officially took effect on October 24, 2024. This legislation clarifies and limits the scope of necessary defendants in vicarious liability claims.

Background: The Clawson Decision and Its Impact on Vicarious Liability Claims

In *Clawson* a patient alleged that a chiropractor had applied excessive pressure during treatment, leading to the rupture of a breast implant. The Plaintiff failed to perfect service within the allotted time, and the individual Chiropractor was dismissed from the case. The plaintiff moved forward and sought to hold the chiropractic

practice liable under the theory of respondeat superior. The Ohio Supreme Court ultimately ruled that without a viable direct claim against the chiropractor, the patient could not proceed against the chiropractic practice.

Portions of the Court's analysis were of particular concern to the plaintiffs' bar. For instance, the Court, in dicta, rejected the argument that *Wuerth* applied only to professionals, stating "[t]o the contrary, with respect to vicarious liability, we found 'no basis for differentiating between a law firm and any other principal to whom Ohio law would apply.'"³ The ramifications of this decision effectively barred plaintiffs from pursuing vicarious liability claims unless they secured direct liability against each individual healthcare provider involved, creating heightened procedural risks, and horribly inefficient litigation practices.

In the wake of this decision, the fear of failing to secure direct liability claims against all individual defendants loomed large. The failure to name every possible participant in a patient's treatment, including support staff and other medical providers, could jeopardize cases due to unforeseen procedural dismissals. Attorneys worried about needing to name hundreds of individuals within the statute of limitations period to protect their clients' rights—an unfeasible task that would overwhelm the court system.

Key Provisions of House Bill 179

House Bill 179 directly addresses these issues by amending Ohio's vicarious liability statutes. The law now stipulates that in a tort action for vicarious liability, a plaintiff may pursue a claim

against the employer without necessarily naming the directly liable employee, except in specific circumstances. Here are the key provisions of the new law:

- 1. Optional Naming of Individual Defendants:** Under the newly enacted Ohio Revised Code section 2307.241, plaintiffs are not required to name individual employees in tort actions for vicarious liability against an employer. This exemption relieves attorneys from the obligation to name all personnel involved in a patient's care.
- 2. Specific Exceptions:** The law enumerates certain cases where the employee must still be named to maintain a vicarious liability claim against the employer, including claims involving physicians, dentists, optometrists, physical therapists, podiatrists, chiropractors and attorneys.
- 3. Clear Limits on Statute of Repose Tolling:** HB 179 amends section 2305.15 of the Revised Code to clarify that statutes of repose are unaffected by tolling during the defendant's absence from the state or concealment.

Implications for Personal Injury Practitioners

This legislative fix restores a measure of predictability for attorneys handling malpractice claims. By clarifying that an employer can be named without listing all potentially responsible employees, HB 179 limits the risk of cases being dismissed due to a failure to name all participants. For attorneys, this significantly reduces the procedural burden and allows them to focus on building the case without a looming concern over malpractice risk.

Attorneys must be cognizant, however, that there is now a codified rejection of any tolling of the statute of repose due

to absence or concealment on the part of the defendant.

It is also noted that this was not a retroactive fix, and did not take place until October 24, 2024.

Best Practices Moving Forward

- 1. Evaluate Necessary Parties Carefully:** While HB 179 alleviates the need to name every individual involved, any professional who can individually commit malpractice, still needs to be named. The statute now specifically identifies the following: "chiropractic claim," "chiropractor," "dental claim," "dentist," "medical claim," "optometric claim," "optometrist," "physical therapist," "physician," and "podiatrist" as claims where individuals need to be named. Practitioners should still assess whether any medical personnel beyond those required by law should be named to support a robust case. This is particularly important in complex cases where multiple parties may bear responsibility.
- 2. Monitor Future Judicial Interpretations:** With any new legislation, judicial interpretation will further refine its application. Attorneys should monitor Ohio court decisions applying HB 179 to understand how its provisions are practically enforced. Given the significant change in the Ohio Supreme Court as a result of the November 5, 2024 election, attorneys must stay on top of cases that could allow for further challenge of this new law. The Ohio Association for Justice maintains a *Clawson* resource guide, and task force, and if you face a *Clawson* challenge, it is strongly encouraged to reach out to them.

- 3. Leverage Legislative Protections Prudently:** Practitioners should be aware that this law is intended to streamline medical malpractice litigation, not eliminate the need for careful preparation. Plaintiffs still bear the burden of proving that an employer's employee acted within the scope of their role when the alleged negligence occurred.
- 4. Educate Clients on Vicarious Liability Claims:** The new law offers an opportunity to counsel clients about the streamlined litigation process in medical malpractice cases. Clients who understand the role of vicarious liability can better appreciate the focus on employers rather than a lengthy list of individual defendants.

Conclusion

This *Clawson* fix is a welcome development for personal injury attorneys who have been navigating the complexities of malpractice claims. By reducing the procedural burden on attorneys and providing clear guidelines for when individual employees must be named, HB 179 enables a more efficient and focused approach to representing injured clients. This legislative fix not only addresses attorney concerns over potential malpractice but also allows Ohio courts to focus on substantive claims rather than procedural pitfalls.

As practitioners move forward under this new law, they should remain vigilant about its application in various scenarios and continue to advocate for their clients within the refined framework of Ohio's vicarious liability statutes. ■

End Notes

- 2022-Ohio-4154.
- 2009-Ohio-3601.
- Clawson*, at ¶23, quoting *Wuerth*, at ¶24.



Nicholas A. DiCello is a partner at Spangenberg Shibley & Liber. He can be reached at 216.696.3232 or ndicello@spanglaw.com.



Dustin B. Herman is a partner at Spangenberg Shibley & Liber. He can be reached at 216.696.3232 or dherman@spanglaw.com.

Eighth District Upholds Verdict For Direct Claim Of Negligence Against Hospital For “Inadequate Notification Policies” After Hospital Failed To Notify Patient About Blood Infection

by Nicholas A. DiCello and Dustin B. Herman

Do hospitals owe a duty of care to their customers (patients) just like any other corporation? Of course they do. So a direct claim of negligence against a hospital should be nothing special. But most medical claims tend to focus on the duties and breaches of individual doctors, nurses, etc. In *Crnjak v. Lake Hospital*, we brought claims against a doctor—and—directly against the hospital for the death of a 68-year-old woman. The jury found against both the doctor and the hospital, splitting fault 50/50 between the two, and awarded \$6 million in total to the plaintiff. The hospital appealed, but the Eighth District upheld the verdict. The decision, *Crnjak v. Lake Hospital System, Inc.*, 2024-Ohio-1977, provides a good reminder that, under Ohio law, hospitals owe a duty of care to their patients—and if hospitals breach that duty and the breach causes harm to a patient, hospitals can be held directly liable.

To be sure, this is *not* a *Clawson* issue because it has nothing to do with holding a hospital *vicariously* liable for an individual person breaching their individual duty of care. As the Eighth District noted, the plaintiff brought a “a direct claim for negligence against Lake Hospital for failing to notify Rose of her lab results” and thus, “whether Crnjak established that a specific employee of Lake Hospital breached the standard of care . . . has no bearing on this appeal.” *Id.* at ¶ 97.

Instead, the issue on appeal was whether plaintiff had proven the hospital itself was negligent. “In the plaintiff’s case against Lake Hospital, it was required to show by a preponderance

of the evidence that Lake Hospital deviated from the standard of care during its treatment of Rose and that this deviation proximately caused Rose’s death. **A hospital is negligent if it fails to exercise the same degree of care, skill, and diligence that a reasonably careful hospital offers under the same or similar circumstances considering the level of services or skills offered by the hospital and what the hospital knew or should have known about the patient’s physical condition, mental capacity, and ability to care for herself.** *Id.* at ¶ 94 (emphasis added). This is actually nothing new under Ohio law. The bolded sentence above is the verbatim OJI jury instruction on a hospital’s “duty of care.” See OJI 417.15(3). Ultimately, the Eighth District simply held that we had proven our case against the hospital.

In this article we will tell the story of the case, the trial, and the appeal, and then we will provide 6 tips for practitioners.

The Story. It’s Saturday night, November 10, 2018. Rose Crnjak, a 68-year-old widow who lives alone, drives herself to the Lake West Emergency Room because of nausea and abdominal pain. The ER doctor diagnoses her with a urinary tract infection and sends her home. Nine hours later, blood test results come back showing Rose actually has a blood infection. The hospital’s alert system sends out “critical red alerts” to various members of the hospital staff. But nobody calls Rose. Nobody tells her she has a blood infection. Four days later, Rose is found dead at home by her family. How did this happen?

Discovery. During a 30(B)(5) deposition, we learned for the first time (despite our previous discovery requests) that the hospital had an alert system called the “Veriphy” system that was totally separate from the hospital’s EMR. When blood culture results come back positive, showing the patient has a blood infection, the Veriphy system sends out “critical red alerts” via a pager system until someone responds. We requested the audit report from the Veriphy system and found not only alerts, but also messages between the hospital staff regarding the response. We then did another 30(B)(5) depo to learn all about the Veriphy system. Below are the messages from the Veriphy audit.

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

Message Notes		
Date/Time	Author	Note/Reason
11/11/2018 12:28 PM	Megan E Loomis	rn aware- to forward to culture nurse
11/11/2018 12:13 PM	Daniel Martinez	Reached Rene, they are aware .
11/11/2018 12:13 PM	Daniel Martinez	Calling
11/11/2018 12:13 PM	Daniel Martinez	Reviewing

Here, the ER nurse, Megan Loomis, wrote “rn aware- to forward to culture nurse.” But November 11, 2018 was a Sunday, and we learned the culture nurse did not work on the weekends. Nurse Loomis was supposed to be acting as the culture nurse on the weekend. Loomis notified the ER doctor on duty of the results, but Loomis said she would only call the patient if she was told to do so by the doctor. She said she did not know what else the culture nurse did other than notify the doctor of the results. The ER doctor, for his part, worked for a staffing company, not the hospital, and did not regularly work at this hospital.

It was pretty clear to us at this point what had happened—it was a Sunday and the culture nurse was not working, the nurse didn’t know she was supposed to notify the patient, and the doctor wrongly assumed somebody from the hospital would notify the patient. With regard to the hospital staff, this was not a matter of a nurse breaching the nursing standard of care. It was a matter of hospital policies failing to ensure that everyone knew what their job was so nothing fell through the cracks.

The Trial. We tried this case in February 2023. Nick was lead counsel. At trial, we argued Rose needed to be notified she had a blood infection and told to come back to the hospital immediately, and that if she had, she would have lived. The hospital, on the other hand, argued—through very well credentialed experts from Harvard and UCLA—that no one

needed to call Rose because she was given IV antibiotics in the ER and that as long as she filled her prescription for antibiotics like she was supposed to, she was going to be fine (i.e., it was the patient’s fault). The hospital also argued that once the hospital notified the ER doctor about the blood infection, it was the doctor’s job to decide whether the patient needed to be notified, and if the doctor did not tell anyone to notify the patient, then that is on the doctor and the doctor alone, not the hospital. (Again, the doctor worked for a staffing company, US Acute Care Solutions, not the hospital.) Finally, the hospital argued that Rose was going to die no matter what, even if she was immediately brought back to the hospital.

In this case, there were no written policies (at least no policies were produced) about notifying patients of critical blood test results when the patient had already been sent home. And we showed the jury there was disagreement over whose job it was to notify the patient. The ER physician’s assistant testified she thought the hospital had a culture team that handled it; the ER nurse, who was supposed to be acting as the culture nurse on the weekends, said the doctor would instruct someone to notify the patient if it needed to be done; and the ER doctor said somebody at the hospital would eventually notify the patient, but it did not need to be done by him at that moment.

We highlighted this disagreement with a series of 3 written questions. Using the iPevo, we put these questions up on the TV and showed them to various witnesses and the jury:

1 Somebody needed to tell patient she had a blood infection, right?	2 Was it your job to tell patient she had a blood infection?	3 Whose job was it to tell patient she had a blood infection?
YES NO	YES NO	_____

(1) Someone needed to **tell patient** she had a **blood infection**, right?

YES or NO

Everyone agreed “yes”;

(2) Was it your job to **tell patient** she had a **blood infection**?

YES or NO

Everyone said “no”;

(3) Whose job was it to **tell patient** she had a **blood infection**? _____.

And we just left a blank space after that question. But nobody could point to a specific person whose job it was.

Throughout the trial, the hospital tried to make the issue about the doctor’s judgment (the doctor made a judgment call, the judgment was reasonable, and the nurse was just following instructions). We argued the doctor was negligent for not instructing someone to notify Rose, but we also argued the hospital was negligent for having a system that failed to notify Rose. And we did not point the finger at a specific nurse. This was not a nursing standard of care issue. It was a whose-job-is-it-at-*this*-hospital issue. It would be odd indeed for us to claim the ER nurse breached the nursing standard of care by not calling the patient, when the nurse didn’t even think it was her job to call the patient. And of course the answer to the question—“whose job is it?”—is going to change from hospital to hospital, depending on the institution’s policies and procedures.

The jury found the ER doctor was negligent because of his, as the jury wrote on the verdict form, “failure to notify of test results.” The jury also found the hospital itself was negligent for having “inadequate notification policies”—which, as we showed at trial, resulted in confusion over whose job it was to notify Rose about the blood infection. Here, we had a failure of the hospital to have adequate policies and procedures in

place and a failure to adequately train the staff on those policies and procedures—so that everyone knew what their job was and nothing fell through the cracks. Ultimately, we proved that Rose fell through the cracks of a broken system.

The appeal. First, we want to give a shout out to Louis Grube of Flowers & Grube. We brought him in to help with the appeal and he was nothing short of fantastic.

On appeal, the hospital argued we never identified a specific employee who breached the standard of care, and therefore we had not proven a *prima facie* case against the hospital. But as quoted above, the Eighth District quickly dismissed this argument, noting that we had brought a direct claim against the hospital and did not need to identify a specific individual who breached their individual standard of care. The issue was whether the hospital breached *its* standard of care. See OJI 417.15(3) (on a hospital’s “duty of care”).

The hospital also argued we did not sufficiently prove the hospital’s policies were inadequate because we never pointed to any specific *written* policies that were inadequate and, the hospital claimed, our expert testimony on the hospital’s policies was lacking. It is true that we presented no *written* policies (because none were produced). But that was part of our argument—that there were no clearly defined policies for whose job this was. And in reality, most policies are institutional, not written. So we proved our case through the testimony of those involved, and we asked everyone about the policy (or “process” or “protocol” or “procedure”) at Lake West for notifying patients when critical blood results came back and the patient had already been sent home. And we showed the appellate court the conflicting testimony as to what the policy was.

We also showed the appellate court how we presented the conflicting testimony to our expert and asked him essentially—regardless of what the actual policy was, since everyone seems to disagree about what it was, “did somebody at the hospital have to notify Rose or reach out to her in a well check under the standard of care once the blood cultures came back?” Answer: “Yes.” The Eighth District held this expert testimony was sufficient testimony as to the relevant standard of care for the hospital. There was of course additional expert testimony than that on why Rose needed to be called and why she needed to return to the hospital for IV antibiotics and that she would have lived if that had been done. But the bottom line for the direct case against the hospital was that somebody needed to tell Rose she had a blood infection, and the hospital needed a policy to ensure that happened. The Eighth District concluded: “[T]he record is clear that neither Rose, nor anyone in her family, nor Dr. Ho [Rose’s PCP], were ever made aware of the fact that Rose had a blood infection. . . . Based on this evidence, the conclusion that Lake Hospital was negligent because of its inadequate notification policies was properly supported.” *Crnjak*, 2024-Ohio-1977, ¶ 98. Both the jury and the appellate court got it exactly right.

PRACTICE TIP #1: Start with the Jury Instructions. OJI 417.15(3) spells out a hospital’s “duty of care” and what you must prove under Ohio law to hold a hospital directly liable for harm to a patient. Notice that what a “reasonable” hospital would do depends on the level of care the hospital is able to provide and what the hospital knew or should have known about the patient’s condition.

PRACTICE TIP #2: Get the Written Policies. Get any written policies that do exist. Request an index of policies and then identify the ones you want. Many

times you will find there are no written policies on the specific issue. The lack of written policies can then be part of prosecuting a negligent policy case.

PRACTICE TIP #3: Map the System.

Do a 30(B)(5) deposition (or multiple) to understand how the hospital’s systems are supposed to function. The EMR is one thing, but hospitals have many other communication platforms and alert systems. You need to understand the system and how information is supposed to flow through the system so you can send out targeted discovery requests and ask intelligent questions during depositions. Most policies, procedures, protocols, processes, etc. are not written. They are institutional. You can ask a corporate representative—“What is the policy/protocol/process/procedure at this hospital when XYZ happens?”—and they will give you an answer. Many answers will not be found in a written policy.

PRACTICE TIP #4: Get the Communications.

Make sure you obtain all communications about the patient. Identifying the communication systems can be done through a 30(B)(5) depo. In virtually every medical malpractice case now, we find important communications that are not saved within the EMR. Dustin has written about this elsewhere (e.g., CATA News, Spring 2022; AAJ Trial Magazine, December 2019), but medical records are just the beginning when it comes to communications about patients. Here is a short and incomplete list of communication platforms used in hospitals: Veriphy, SecureChat, Signal, Perfect Serve, plain old text messages, Trillian, Sticky Notes, Vocera, Direct Messages, emails, paging systems, in-basket messages, best practice advisories (like sepsis alerts).

PRACTICE TIP #5: Find the Failures in Communication.

Most medical malpractice cases come down to failures in communication. Jurors understand that people often have to work together as a team and that failures in communication can happen when the team does not work well together. We developed a lot of evidence in this case that the ER doctors and the hospital staff did not work well together as a team (e.g., the ER doctors worked for a staffing company and were just covering shifts at Lake West as needed and had only worked with the ER nurse a few times).

PRACTICE TIP #6: Expert Testimony on What Needed To Be Done.

In *Crnjak*, we focused on *what* needed to be done, instead of *who* needed to do it. In this case that was: Rose needed to be told she had a blood infection. Period. That was not done. Period. Whose job it was to notify her is not a matter of the standard of care. It is a matter of the institution’s policies and procedures, and it will be different at every hospital, depending on how the hospital is set up. If there is a failure in communication, the answer to the question—“why did this happen?”—may very well be because of “inadequate notification policies,” just like the jury wrote in *Crnjak*. So have your expert focus on *what* needed to be done, and allow there to be disagreement over *who* needed to do it.

* * *

Crnjak v. Lake Hospital System, Inc. and OJI 417.15(3) are great reminders that hospitals—just like any other corporation—owe a duty of care to their customers and they can and should be held directly responsible for violating that duty. ■



Brenda M. Johnson is a partner at Nurenberg, Paris, Heller & McCarthy Co., LPA. She can be reached at 216.694.5255 or bjohnson@nphm.com.

The Ohio Supreme Court's Expansion Of The Same Juror Rule – And Other Issues To Remember When It Comes To Jury Interrogatories

by Brenda M. Johnson

Under the “same juror” rule, only those jurors who find a defendant negligent may participate in determining whether the defendant’s actions were a proximate cause of injury. In 1991, in the case of *O’Connell v. Chesapeake & Ohio R. Co.*,¹ the Ohio Supreme Court held that this rule applies in cases involving claims of comparative negligence. Subsequent opinions from the courts of appeals limited *O’Connell* to the issue of allocation of fault between parties. However, in *Hild v. Samaritan Health Partners*,² decided on September 5, 2024, the Ohio Supreme Court held that the “same juror” rule applies to questions of negligence and proximate cause as well, in *all* negligence cases.

This means we must ensure that jury interrogatories on these issues comport with *Hild*’s requirements, and must include instructions that inform the jurors that the *only* jurors who can sign an interrogatory as to whether a party’s conduct was a proximate cause of injury are those who found that the standard of care was breached by that party in the first instance. Then, as *O’Connell* already required, if there is an apportionment issue in your case, it is imperative that you ensure that apportionment interrogatories contain an instruction that informs the jury that only those jurors who found liability on the part of all those among whom liability is to be apportioned can sign the interrogatory that apportions fault.

These are not, however, the only issues of which we need to be vigilant when it comes to jury interrogatories and the instructions that

accompany them. When it comes to assessing damages in cases where comparative fault is an issue, jurors can sometimes become confused as to how they should calculate damages, which is exactly what occurred in *Cook v. M-F Transport, Inc.*,³ a case which our firm recently tried. As discussed in more detail below, the jurors in that case mistakenly took it upon themselves to reduce the amount of damages by the percentage of fault they had attributed to the plaintiff – a fact that did not become known to the court or the parties until after the jury was formally discharged. An instruction might have precluded the jury from having done so. Also, in cases where there is a fact question as to whether your client’s injuries support an exception to the noneconomic damage caps in R.C. § 2315.18 and R.C. § 2323.43, it is imperative that you propose a jury interrogatory on this issue before the commencement of closing argument. Otherwise, you risk the application of the caps to a damage award, regardless of the evidence.⁴

The Same-Juror Rule And Comparative Fault

O’Connell involved an appeal from a jury verdict in a railroad crossing crash case in which the defendant railroad argued that the plaintiff was also at fault. The jury had been given interrogatories addressing negligence and proximate cause as to both plaintiff and defendant, as well as apportionment of fault. Six jurors signed the interrogatory allocating fault; however, it turned out that a juror who had not

signed any of the interrogatories finding fault or proximate cause as to either party had signed the interrogatory apportioning fault between the parties, as had a juror who had not found fault or proximate cause on the part of the railroad.⁵

The plaintiff challenged this on appeal, contending that the participation by these two jurors in the process of allocating fault between the parties was impermissible, as it essentially meant that only four of the eight jurors had concurred as to allocation of fault, which in turn meant that the verdict violated Ohio's constitution, which requires civil verdicts to be rendered by no less than three-fourths of the jury.⁶

This posed a question of first impression for the Court, which was whether to adopt the "same juror" rule, or, instead, to adopt what is known as the "any majority" rule.⁷ As the *O'Connell* opinion notes, courts applying the "same juror" rule hold that the same jurors must decide both causal negligence and apportionment of fault, based on the proposition that "a juror's finding as to whether liability exists is so conceptually and logically connected with apportioning fault that inconsistent answers to the two questions render that juror's vote unreliable and thus invalid."⁸ The "any majority" rule, on the other hand, rests on the proposition that a dissenting juror can nonetheless accept the majority's finding as to the parties' negligence and participate intelligently in deciding the issue of allocation of fault between them, and that limiting that juror's participation effectively deprives the litigants of the benefit of a full jury.⁹

The *O'Connell* Court chose to adopt the "same juror" rule for cases involving claims of comparative negligence, and in light of that found that the two jurors who had not found fault on the part of both the plaintiff and the defendant should

not have participated in determining how to allocate fault between them. As such, the Court found the verdict in that case was constitutionally invalid, as the participation of those two jurors in allocating fault had resulted in a verdict rendered by less than three-fourths of the jury.¹⁰

The Same Juror Rule And Liability In General

O'Connell is clear when it comes to the "same juror" rule in cases involving allocation of fault. What was *not* clear, however, was whether the "same juror" rule should also be applied to the initial questions of liability – namely, whether a party was negligent and whether that party's negligence was a proximate cause of injury. Ohio's courts of appeals took the position that the concerns posed by allocation of fault were not implicated when it comes to the initial questions of negligence and proximate cause. In *Estate of Lawson v. Mercy Hosp. Fairfield*,¹¹ for instance, the Twelfth District found that the question of whether there was a breach of the standard of care was sufficiently independent of the question of proximate cause that the "same juror" rule did not apply. The Tenth District reached the same conclusion in *Dillon v. OhioHealth Corp.*,¹² which a divided Ohio Supreme Court declined to review.¹³

In *Hild v. Samaritan Health Partners*, the Ohio Supreme Court reached the opposite conclusion, both as to accepting the appeal and as to the applicability of the "same juror" rule. In that case, the trial court (over plaintiff's objection) gave the jury interrogatories on the issues of negligence and proximate cause as to a defendant that were accompanied by instructions that followed the same juror rule – namely, that the only jurors who could participate in determining whether that care provider's conduct was a proximate cause of injury were the

ones who found negligence on the part of that care provider.¹⁴ The jury returned a defense verdict, and on appeal to the Second District, the plaintiff argued that the instruction violated his right to a trial by full jury.¹⁵

The Second District agreed, following *Lawson* and *Dillon*, but the Ohio Supreme Court held otherwise. Unlike the lower courts, the Supreme Court found that the issues of "duty, breach, and proximate cause" are interdependent, and thus "[i]t would be illogical to allow a juror who does not find a duty or a breach of that duty to vote on the issue of proximate cause."¹⁶ Curiously, the Court also indicated that this rule does not prohibit jurors who do not find fault from participating in a *discussion* of the issue of proximate cause – the rule only prohibits them from *voting* on the issue.¹⁷ Based on this, the Court found no error in the instructions given with the interrogatories in that case, and reinstated the defense verdict.¹⁸

What this means is that in *every* case in which interrogatories on negligence and proximate cause are submitted to the jury, regardless of whether comparative fault is at issue, the jury must be instructed that the *only* jurors who can vote on whether a particular party's conduct was a proximate cause of injury are those who found a breach of the applicable standard of care on the part of that particular party. The trick, though, it would seem, would be phrasing this instruction in a way that preserves your client's right to have the entire jury participate in discussing this issue, while at the same time ensuring that the only jurors who vote on it are those who are authorized to do so under the "same juror" rule. To that end, an example instruction to accompany a proximate cause interrogatory (here, a hypothetical "Interrogatory B" following a hypothetical "Interrogatory A" as to negligence) might be worded as follows:

“All jurors may participate in discussing Interrogatory B. However, only those jurors who answered “YES” to Interrogatory A may vote on or sign Interrogatory B.”

Instructions On Damages Interrogatories In Cases Where There May Be Allocation of Fault

Another area of potential confusion arises when jurors are asked to calculate damages in cases where there has been an allocation of fault. Under R.C. § 2307.22, any tortfeasor that is responsible for 50 percent or less of the tortious conduct is responsible for only his or her proportional share of economic damages, and no defendant is liable for more than its proportionate share of noneconomic damages. A defendant’s proportionate share of damages is calculated by multiplying the total amount of damages by that defendant’s share of fault. For purposes of this calculation, R.C. § 2307.23 requires that the jury be given interrogatories specifying the percentage of tortious conduct attributable to the respective parties and to any relevant third party. The trial court then applies the apportionment to the damages figure provided by the jury.

For this to work correctly, the jury must first arrive at a *total* damages figure that can then be apportioned between the relevant parties. In a recent case tried by our firm, however, the jury took it upon themselves to reduce the damages, and entered a number in the damages interrogatory provided to them that reflected the percentage of fault they had assigned to the defendants – even though the interrogatory required them to determine the plaintiff’s “total damages.”¹⁹ When the jurors were told that their damage award would be reduced by the defendants’ share of fault, they explained they had already done so.

In that case, the jury was re-convened to correct the interrogatory, and the resulting verdict was upheld on appeal. However, in order to discourage jurors from making their own calculations, in cases where apportionment is an issue it is worthwhile to frame your damages interrogatory in a way that makes it clear that the jury is to calculate damages *without regard* to any apportionment of fault. An example interrogatory could be framed as follows:

“State the total amount that would fully and fairly compensate [Plaintiff] for her injuries, without regard to any percentage of fault you may have attributed to any party.”

Interrogatories In Cases Where Exceptions To Damage Caps Are At Issue

Finally, in cases where your client’s injuries are severe enough to get past Ohio’s statutory caps on noneconomic damages, it is imperative that you propose submitting a jury interrogatory on this issue before closing argument at trial. Neither R.C. § 2315.18 nor R.C. § 2323.43 specifically require an interrogatory to be submitted on this specific issue; however, Ohio courts have interpreted these statutes to require the jury to make a factual determination as to whether a plaintiff’s injuries fall within an exception to the caps.²⁰ From this, these same courts have held that the caps will apply unless the jury itself makes a finding on this issue through an appropriate interrogatory.²¹ Moreover, such an interrogatory must be proposed within the time period set forth in Civ. R. 49(B), which requires proposed jury interrogatories to be submitted to the court and opposing counsel prior to the commencement of closing argument.²²



End Notes

1. 58 Ohio St.3d 226 (1991).
2. 2024-Ohio-3338.
3. 2024-Ohio-4678 (8th Dist.).
4. See *Estate of Samples v. Lagrange Nursing & Rehab. Ctr., Inc.*, 2024-Ohio-4441 (9th Dist.); *Giuliani v. Shehata*, 2014-Ohio-4240 (1st Dist.).
5. *O’Connell*, 58 Ohio St.3d at 228, 229-230.
6. *Id.* at 231.
7. *Id.* at 232.
8. *Id.* at 233.
9. *Id.* at 233-234.
10. *Id.* at 236-237.
11. 2011-Ohio-4471 (12th Dist.).
12. 2015-Ohio-1389 (10th Dist.).
13. *Dillon v. OhioHealth Corp.*, 2015-Ohio-4947 (appeal not accepted for review; O’Donnell, Kennedy, and French, JJ, dissenting).
14. *Hild*, 2024-Ohio-3338, ¶¶ 6-7. Notably, at the time the *Hild* trial was conducted (and as of this day), the form interrogatories accompanying CV 403.01 of the Ohio Jury Instructions included this instruction. See OJI CV 403.01.
15. *Hild v. Samaritan Health Partners*, 2023-Ohio-2408, ¶ 44 (2d Dist.), *reversed in part*, 2024-Ohio-3338.
16. *Hild*, 2024-Ohio-3338, ¶ 23.
17. *Id.* at ¶ 24 (“[J]urors who do not find one element of a negligence action are not barred from participating in deliberation discussions about the other elements – they are prohibited only from voting on them.”).
18. *Id.* at ¶ 25.
19. *Cook v. M-F Transport, Inc.*, 2024-Ohio-4678, ¶¶ 8, 26.
20. See *Estate of Samples v. Lagrange Nursing & Rehab. Ctr., Inc.*, 2024-Ohio-4441 (9th Dist.); *Giuliani v. Shehata*, 2014-Ohio-4240 (1st Dist.).
21. *Id.*
22. Civ. R. 49(B); see also *Estate of Samples*, 2024-Ohio-4441, ¶ 9 (“A trial court is not required to consider proposed interrogatories that are submitted outside of the timeframe provided by Rule 49(B).”).



Marilena DiSilvio is a partner at Elk & Elk Co., Ltd. She can be reached at 440.442.6677 or mdisilvio@elkandelk.com.

Pointers From The Bench: An Interview With Judge Michelle J. Sheehan: A Legal Luminary With Heart

By Marilena DiSilvio

In the corridors of the Ohio Eighth District Court of Appeals, Judge Michelle J. Sheehan shines not only as a brilliant legal mind but also as a beacon of mentorship and inspiration. Her journey from a determined student in Niles, Ohio to a respected appellate judge is filled with wisdom, hard work, empathy and a deep commitment to justice.

Background: From Ambitious Student to Appellate Judge & Community Leader



Judge Michelle J. Sheehan

Judge Sheehan's story begins in Niles, Ohio, where she navigated the challenges of a single-parent household. As the first in her family to attend college, she didn't have a roadmap but charted her own course with the tenacity of a seasoned litigator. At fifteen, she figured

out a way to work multiple jobs to ultimately pay for college, law school and everything in between. A natural at creatively coming up with solutions that make sense, and are effective and efficient, Judge Sheehan was destined for the practice of law - a profession she was encouraged to pursue by her high school vice-principal. Intrigued by the suggestion, she took the initiative to call Judge Ann Dyke, who served on the Cuyahoga County Court of Common Pleas and ultimately the

Ohio Eighth District Court of Appeals, and who became Judge Sheehan's senior project mentor.

Judge Sheehan received her bachelor's degree from Miami University, Oxford, Ohio. With aspirations that evolved from secretary to paralegal, she ultimately took the plunge into law school at Cleveland State University College of Law at the prompting of attorney Jaye Schlachet.

While studying for finals in the Cleveland State law library, Judge Sheehan met her husband, the Honorable Brendan Sheehan, Administrative and Presiding Judge on the Cuyahoga County Court of Common Pleas. Their shared law school experience helped forge their initial bond which has only strengthened with time, the addition of family, and shared judicial experiences, including supporting each other on the campaign trail.

Throughout law school and even after receiving her Juris Doctor, Judge Sheehan continued to be mentored by Judge Ann Dyke, who not only helped shape her legal career but also inspired her passion for mentoring and leadership.

Judge Sheehan has served as President of the Ohio Women's Bar Association and has held various leadership roles in local organizations including the CMBA, YWCA, Cleveland State University College of Law, and Rocky River Civil Service Commission, amongst others.

Practice Pointers: From Experience

Reflecting on her early days as a lawyer, Judge

Sheehan admits, "Had I known then what I know today, I would have practiced differently." Rather than honing in on opposing arguments, she emphasizes understanding the Court's perspective to tailor arguments that resonate. "Spend more time looking out the window with contemplative and analytical thoughts," she advises. This wisdom highlights her belief that understanding the broader implications of a case is essential. The Court of Appeals is bound by precedent.

Judge Sheehan offers sage advice that's as straightforward as it is insightful. First, remember that each case is given a fresh slate. The judges operate as three separate silos. Briefs are the starting point for the appellate judges. Each will read the trial transcripts and depositions, after which each will research and exhaustively read about the issue presented. Second, know the case law and the applicable standard of review. To be effective in your persuasion, "follow the trail of the law." And, know whether it is a case of first impression and whether there are conflicts with other districts.

Judge Sheehan underscores the value of submitting a reply brief, as it is often the last document read before oral arguments, giving it a unique weight. She also emphasizes the importance of oral arguments. "Don't waive oral argument." Consider the message you are sending if you're willing to forego the opportunity to personally present your arguments to the very people deciding your case.

The judges do not talk about the case in advance of oral argument. Opinions are not circulated in advance. Not all questions are prepared in advance and the questions asked are not indicative of outcome. Each case is treated with respect and thoroughness, free from preconceived notions about the trial judge.



Judge Michelle Sheehan and family

"Both sides must be heard," and fairly considered she emphasizes, reflecting the lessons learned from mentors, Judges Patricia Gaughan and Donald Nugent.

Commitment to Mentorship: Paying It Forward

Judge Sheehan is passionate about mentorship, believing firmly in the mantra: "Have a mentor and be a mentor." She credits much of her success to the guidance of her mentors and is dedicated to ensuring that the next generation of lawyers has the same opportunities.

Judge Sheehan has created and implemented comprehensive internship or externship opportunities which are available fall and spring semesters and even during the summer. These programs expose students to the pragmatic workings of our justice system and provide opportunities for brief writing and oral advocacy. And, her ability to connect people is unparalleled.

Judge Sheehan is also responsible for training new appellate judges and leading the 8th District Judicial Conference. These roles allow her to pass on the knowledge she has accumulated over the years.

Family: The Heart of It All

When she's not busy on the bench, Judge Sheehan enjoys a vibrant family life. The three adult Sheehan children – ages 26, 24, and 21 – are forging their own successful paths, from a surgical residency to a career in graphic design to a career following in the family footsteps: law. Now empty nesters, the Judges Sheehan are taking on new adventures together.

Judge Sheehan's story is not just about legal accomplishments; it's about gratitude and a deep-seated commitment to uplifting others. As she continues her journey on the bench, she remains a shining example of how one can balance professionalism with kindness, mentoring with humility – and have a fierce dedication to justice – all the while prioritizing family. ■

In Memoriam: Christopher M. DeVito

By Paul Grieco

On May 4, 2024, the Cleveland legal community suffered a tremendous loss, with the passing of Christopher M. DeVito. Chris passed away after a long courageous battle with pancreatic cancer. Despite his diagnosis, every day he continued to "Play Like a Champion!" He fought the disease with the same grit, perseverance and tenacity that he brought to the courtroom when fighting for his clients in the pursuit of justice.

Chris's skills as a trial attorney were learned at a young age, when, after graduating from Ohio State Law School, he began working in his father's law office. He then became a founding member of Morganstern, MacAdams & DeVito where his plaintiff's litigation practice continued to grow. As a young litigator he had immediate success in various types of cases, including *Jim's Steak House vs. The City of Cleveland*, which he successfully argued all the way to the Ohio Supreme Court. Chris went on to gain a reputation as a top-notch automobile dealership attorney and regularly handled cases throughout the country, successfully taking on major corporations.

Chris was more than just a great lawyer. He was a cherished family member and great friend! Chris was a Big Guy with a Big Heart. He had an unwavering commitment to his family, faith and friends. (Even those that did not attend his beloved University of Notre Dame.) That commitment was further extended to serving his community in multiple ways, including as President of the Cleveland National Air Show and Notre Dame Club of Cleveland as well as serving on the board of the Boys and Girls Club. In 2009, as a result of his dedication to his community, Chris was selected as alumnae of the year of the Notre Dame Club of Cleveland.

I miss Chris every day. But every day I know I am a better person because I am able to call him my friend. Chris's memorial included the following poem titled, "A Successful Man," by Bessie Anderson Stanley, which sums up the type of man he was:

That man is a success-
Who has lived well, laughed often and loved much;
Who has gained the respect of intelligent men and the love of children;
Who has filled his niche and accomplished his task;
Who leaves the world better than he found it;
Who has never lacked appreciation of earth's beauty or failed to express it;
Who looked for the best in others and gave the best he had.

Rest in peace my friend.



Beyond The Practice: CATA Members In The Community

by Dana M. Paris

Ken Knabe



Ken Knabe

Ken Knabe's support of cycling in the Greater Cleveland area continued in August 2024 with the annual Bike Cleveland Fundo, an event hailed as one of the greatest urban rides in America. The Fundo runs entirely throughout Greater Cleveland starting and ending at Edgewater Park, offering various ride distances. The 60-mile option was "Powered by the Knabe Law Firm". Ken enjoyed announcing the start of this ride to 1,300 cyclists!

Tom Merriman



Tom Merriman

Tom Merriman chaired the Collaborative to End Human Trafficking's annual event which took place on September 19, 2024 at Windows on the River. The Director of HHS's Office on Trafficking in Persons spoke at the event which honored Senator Sherrod Brown and Maya Simek, Director of the CWRU Law School Human Trafficking Clinic, for their work on the issue.

Tom's exposure to human trafficking dates back to 1993 when he was Deputy Ohio Attorney General. He litigated several cases involving prostitution operations which were part of a human trafficking network. In 2002, Tom did a hidden camera investigation for the Fox 8 I-Team in South Korea where they detailed how trafficked women working outside US military bases were winding up indentured in northern Ohio. In the process of shooting the story, he

and his team exposed US Military Police patrolling bars and brothels outside the military bases in order to protect American soldiers utilizing the services of trafficked women and teenage girls. After the story aired, a group of women in Cleveland invited Tom to speak about the issue. A few years later, the Collaborative to End Human Trafficking was established. They have been doing ground breaking work ever since.

To find out more about the Collaborative to End Human Trafficking: <https://collabtoendht.networkforgood.com/events/71877-inspire-change-2024>

Scott Kuboff



Scott Kuboff and The Tortfeasors



Out of Order featuring Marcus Sidoti on Drums

Several members of CATA picked up their instruments in support of Legal Aid at the 2024 Jam for Justice. The fundraiser was held at the Beachland Ballroom & Tavern on August 21, 2024. Kicking off the event was *The Tortfeasors*,



Six Sometimes Seven with Paul Grieco on bass and vocals

featuring CATA President, **Scott Kuboff**, on guitar. *The Tortfeasors'* set can be viewed at youtube.com/skuboff. The *No Name Band*, featuring CATA member, **Peter Brodhead**, on piano, took to the Ballroom stage followed by *Six Sometimes Seven*, featuring CATA member, **Paul Grieco**, on bass and vocals. Closing the Tavern stage was *Out Of Order*, featuring CATA member, **Marcus Sidoti**, on drums.



Dana M. Paris is a partner at Nurenberg, Paris, Heller & McCarthy Co., LPA. She can be reached at 216.694.5201 or danaparis@nphm.com.

Announcements - Winter 2024-2025

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

Recent Promotions and New Associations



Hickman Lowder Lidrbauch & Welch Co., L.P.A. is thrilled to welcome back attorney **Amanda M. Buzo**, who rejoined our team on August 19, 2024, at our Sheffield Village office. Her extensive experience in special needs estate planning, guardianships, estate administration, and other probate matters, including the settlement of personal injury and wrongful death

claims, will significantly enhance our commitment to serving clients with special needs and their families. To learn more, visit <https://www.hickman-lowder.com/blog/2024/09/hickman-lowder-announces-the-return-of-attorney-amanda-m-buzo/>.



Nurenberg, Paris, Heller & McCarthy Co., L.P.A. is pleased to welcome **Kyra E. Wieber**, graduate of Cleveland State University College of Law, as an associate attorney.

Kyra's practice focuses on auto accidents, truck accidents, premises liability, and other personal injury cases.

Honors, Awards, and Appointments



The Cleveland State University of Law Alumni Association honored **Kemper Arnold** as one of two alumni of the year. The CSU Law Annual Recognition Luncheon was held at the Cleveland Renaissance Hotel on Tuesday, May 21, 2024.



Sarah Gelsomino was accepted to Leadership Cleveland, a 10-month program focused on empowering senior-level leaders with knowledge, skills and relationships to advance and deepen their community impact. To learn more about Leadership Cleveland, please visit: Leadership Cleveland - Cleveland Leadership Center.

CATA Annual Dinner 2024





Ellen Hobbs Hirshman is an attorney at Lowe Scott Fisher Co., LPA. She can be reached at 216.781.2600 or ehirshman@lsflaw.com.

Pointers From The Bench: An Interview With Judge Kelly Ann Gallagher

By Ellen Hobbs Hirshman

When you enter Courtroom 21C at the Justice Center, you will encounter a jurist who possesses a diverse background of experiences. Judge Kelly Ann Gallagher was a student volunteer for the Granville Fire Department while attending Denison University. She became certified as an emergency medical technician-basic (EMT-B) in 1996 during the summer of her freshmen year in college and then certified as a volunteer firefighter in 1997 (Granville fire department sent her to volunteer firefighter training while attending Denison University). After college, Judge Gallagher went to paramedic school in the evenings while working full time as a probation officer, first in Cuyahoga County then in Medina County. When she was a full-time Firefighter and Paramedic, she attended law school at Case Western Reserve.

During her career as a Firefighter and Paramedic, Judge Gallagher also became certified/licensed as a Fire Inspector and an Arson Investigator. She won two awards as a firefighter- both were the Chris Holt Award. These are awards given for excellence in trauma care. One of two awards was for the emergency care Judge Gallagher provided to a child en route to Metro after the young girl had been shot in the face by her father at the Cracker Barrel in Brooklyn.

Judge Gallagher graduated from Case Western Reserve University School of Law in 2007. Upon obtaining her license as a lawyer in the State of Ohio, she embraced criminal defense work as a solo practitioner. Her prior experiences working as a Probation Officer, Firefighter and Paramedic served as a solid foundation for her work as a criminal defense attorney, which provided her with the opportunity to try many cases. She handled Aggravated Murder cases and was certified to handle death penalty cases.

In 2016, when Judge Jose Villanueva decided not to seek re-election, Judge Gallagher found herself

prevailing in a 4-way race for his seat. She has been on the bench since 2017 and was successful in her re-election campaign in 2022.

Judge Gallagher grew up in Brooklyn, Ohio and attended St. Thomas More grade school.

She then went to Magnificat High School and graduated from Denison University in 1999 with a degree in Psychology. In retrospect, Judge Gallagher appreciates her decision to defer law school, become a Probation Officer, and pursue her dream of working as a Fire Fighter and Paramedic. These experiences have positively impacted her work as a criminal defense attorney as well as a judge. She believes her experience in the medical field has served her well when handling both criminal and civil cases.

Judge Gallagher truly enjoys being a judge. She tries a lot of cases. In the past year and a half, she has tried 24 cases, 5 of them being civil trials. She enjoys the medical malpractice cases and appreciates that these cases are more complex and contain more issues that require substantial consideration. The discovery in these cases is voluminous and there are often roadblocks that require the court's attention. She is always available to discuss any issues that arise in discovery. She is also open to meeting with the parties. All they need to do is reach out to the Court and request a conference.

Judge Gallagher respects a strong advocate. Having been a trial attorney herself, she understands the emotion and intensity that builds up when advocating for one's client. However, she cautions against those attorneys who go too far and lose their professionalism. Once an attorney becomes nasty, they lose the respect of the court and jury.



Judge Kelly Ann Gallagher

Judge Gallagher has always appreciated the manner in which attorneys strategically introduce demonstrative evidence to facilitate telling their story and persuading the jury. She cautions, however, that trial attorneys should take great caution to control what they publish to the jury and when they publish it. She often finds that if you place a whole page or series of pages in front of a jury while simultaneously attempting to make a point, the jury will zero in on the documents published and stop listening. Trial attorneys need to be judicious and thoughtful and only publish that information which you want the jury to be focused on in that moment. This may involve highlighting or pulling out the important message that you are trying to drill into the jurors' minds.

When in trial, Judge Gallagher is generous with the amount of time she permits the parties to utilize when presenting their case. She tried many cases in the past when a Judge implemented strict time limitations on voir dire, opening statements, closing arguments and other aspects of the trial. Judge Gallagher does not impose any such time restraints. She wants to give every party the opportunity to take as much time as they feel is necessary to present their case and persuade the jury. So, the responsibility falls upon the trial attorney to discern how much time is the right amount and to be cautious about potential harm by "overtrying" the case. When it comes to peremptory challenges, Judge Gallagher believes the Plaintiff should be allotted the same amount the defendants receive in total. When conducting Voir Dire, she requires that you inquire of the complete panel, not just those jurors seated in the box which she believes to be more judicious.

Judge Gallagher also possesses a commitment to providing less

experienced attorneys with opportunities to come into the courtroom and obtain experience presenting their case before a judge whether it be an oral hearing on a motion, examination of a witness at trial, or other aspect of a trial. If there is a motion pending, the parties may reach out to her court and request that a hearing be conducted on the motion which will provide lesser experienced attorneys with an opportunity to argue a motion in front of a judge. She is also a proponent of permitting two attorneys, representing the same party, to break up their direct or cross examination of a witness or Voir Dire or Opening Statement in order to give younger attorneys the opportunity to engage in these aspects of the trial. This way less experienced attorneys are given the opportunity to conduct part of a voir dire, while the senior attorney on the case can also inquire of the panel to ensure all issues are thoroughly covered. The path to experience is expedited with these incredible options.

As we all know, there are many specialty dockets in the Cuyahoga County Court of Common Pleas. Judge Gallagher presides over the Traditional Drug Court docket established in 2008, and previously overseen by the late Judge Nancy McDonnell. The drug court seeks to break the cycle of recidivism by addressing an offender's drug dependency. The court's website states the "Drug Court has graduated hundreds of individuals, returning them to their communities as sober citizens." Judge Gallagher mentioned that the late Judge McDonnell always had hoped that a medical malpractice specialty docket

would be created. Judge Gallagher also would love to oversee a medical practice specialty docket. Who knows, there may be one in the future.

Outside of the courtroom, Judge Gallagher has a busy personal life. She enjoys reading fiction, fantasy, and sci-fi. Gardening is another way Judge Gallagher enjoys spending her free time. She and her family also love to travel. One of their recent trips was traveling to Baja, Mexico to pet the whales. She describes this experience as truly magnificent and has checked this experience off of her bucket list. Her husband is the Fire Chief in Sheffield Village. Her son is a very active sixth grader. And, Judge Gallagher is a beekeeper! This is a hobby she learned from her beloved father. Since his passing she keeps the bees in her back yard and is carrying on this tradition as an homage to her father. If you google the traits of a beekeeper, you will learn "Beekeepers tend to be predominantly investigative individuals, which means that they are quite inquisitive and curious people that often like to spend time alone with their thoughts. They also tend to be social, meaning that they thrive in situations where they can interact with, persuade, or help people." Sounds just like Judge Kelly Gallagher. ■



Judge Kelly Ann Gallagher and family



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

An Update On FSHCAA, The Federal Medical Malpractice Law

by Louis E. Grube

For the CATA News issue published a year ago,¹ I wrote an article explaining how the Federally Supported Health Centers Assistance Act² and regulations issued under it³ (collectively “FSHCAA”), federalized medical malpractice defense and liability coverage in cases against federally-supported clinics and the doctors who work there. Claims against clinics funded by federal grants are transformed by the FSHCAA into claims under the Federal Tort Claims Act⁴ (“FTCA”). At that time, we were waiting for some decisions about how these laws work, and I write now with a short update.

As a refresher, it was clear at the time of my last article that the FSHCAA can follow individual physicians to work performed outside a federally funded clinic, even where these circumstances may not come to light until after a lawsuit is filed. The ‘scope’ of employment with the Public Health Service (“PHS”), which is the work of a physician covered by the FSHCAA, has been defined by regulation to exclude “services which are not on behalf of the covered entity,” i.e. the federally supported clinic, with certain exceptions.⁵ For example, “acts and omissions related to the grant-supported activity of entities” will still “be covered,” even if they are “provided to individuals who are not patients of a covered entity.”⁶

But importantly, courts considering whether the FTCA applies have historically relied upon state law standards governing the scope of employment to decide whether a claim against a federal employee is really a claim against the federal government. That rule makes sense because the FTCA expressly imports “the law of the place where the act or omission occurred”

for that purpose.⁷ Without text like that in the FSHCAA, and with regulations promulgated under it that specifically describe a potentially narrower scope of employment with the PHS, the question arose whether Ohio’s respondeat superior standards might also play a role.

In one of the cases our firm was handling, *N.B. by Bray v. Secours Mercy Health, Inc.*,⁸ a District Court ruled that the FTCA’s adoption of state law on the scope of employment does govern in disputes over whether an individual doctor had coverage under the FSHCAA. At the time of my last article, we had challenged that ruling at the United States Court of Appeals for the Sixth Circuit. Just last March, the Sixth Circuit declined to address whether Ohio law is dispositive because the District Court *had also* gone through the analysis under the regulatory scheme.⁹ This issue remains unanswered in the Sixth Circuit, and it could be worth raising in a future case to try to avoid dealing with the FSHCAA and the FTCA.

The Sixth Circuit panel in *Bray* also rejected our argument that the District Court made a mistake in ruling that the defendant physician’s work moonlighting at a private hospital “was sufficiently related to” the federally supported clinic’s “grant-supported activity.”¹⁰ This ruling should serve as a new warning to the unwary. The plaintiff in *Bray* was never a patient of the federally supported clinic, and the clinic’s physician only encountered the plaintiff through his work moonlighting at a local private hospital. The plaintiff did not receive any disclosure at the hospital that the doctor had been lent to the facility by the clinic or was a PHS employee, and the arrangement with the private

hospital was not specifically disclosed in any federal grant application. The grant application merely said that physicians paid with grant funds would provide certain kinds of medical services at hospital locations generally and at some other identified facilities. The plaintiff's care was not even funded by a grant, as the care at issue was paid for by health insurance. With this very tenuous connection to a federal grant, the Sixth Circuit still determined that the defendant physician's work was related enough to a federal grant to extend federal coverage to it under the FSHCAA.

In my article last year, I also explained that it is important to determine early on whether a potential defendant physician has been deemed a PHS employee. Doing so will allow you to comply with the strict administrative-claims procedure mandated by the FTCA and the potentially shorter statute of limitations, which is not tolled by minority or disability in the same way as Ohio's statute of limitations. In an awesome concurring opinion echoing these concerns, Sixth Circuit Judge Amul R. Thapar took the opportunity in *Bray* "to explain how litigants can avoid these traps and preserve meritorious claims."¹¹ He questioned rhetorically what reason the plaintiff had "to suspect the United States was lurking in her hospital room?"¹² And he observed that there "wasn't any."¹³ In this context, he suggested that equitable tolling "may be appropriate" where a plaintiff was "completely unaware of a defendant's federal status" and did not "discover that their malpractice claim is subject to the FTCA—and its two-year statute of limitations—until it's too late."¹⁴

Judge Thapar also suggested that a plaintiff who filed an FSHCAA claim before finding out that they were required to exhaust federal administrative remedies "should file a

separate, 'protective' action in federal court after they exhaust, even as their jurisdictional dispute continues in the original case."¹⁵ He expressed that this would permit a plaintiff to comply with the FTCA procedures without "losing progress in their jurisdictional dispute" if they contest that the FSHCAA applies at all.¹⁶

While this observation is wise, it also creates new potential pitfalls for a plaintiff with respect to state-law co-defendants. If a case was originally filed in state court, as is typical when a plaintiff has no idea that the federal government is involved, a District Court is not obligated to retain supplemental jurisdiction over the other defendants when the United States is dismissed for failure to exhaust administrative remedies. The state-law defendants are likely to be remanded to state court. Meanwhile, if the protective action Judge Thapar suggested filing is initiated directly in federal court, there is no way to remand it to state court if the District Court declines to hold onto the state law claims. This can create issues if multiple actions are filed against state-law defendants. And at least one Ohio Common Pleas Court has dismissed claims against state-law medical malpractice defendants *with prejudice* after determining that the claims against them had been dismissed and refiled too many times during progress through the federal courts.

Finally, Judge Thapar also expressed doubt that claims proceeding under the FSHCAA can be decided on the merits by a District Court Judge under the Seventh Amendment right to a jury trial.¹⁷ This issue is fascinating, and Judge Thapar has raised it a second time since then.¹⁸ As he explained, the FTCA mandates bench trials for claims pursued under it against the United States, but the Seventh Amendment to the United States Constitution should

preserve the right to a jury trial owed under a state constitution.¹⁹ Claims falling within the FSHCAA and the FTCA are simply common law claims in their basic essence because neither statute creates any new rights or causes of action.²⁰ And under the Seventh Amendment, "litigants bringing claims that resemble common-law actions and seeking legal remedies are entitled to a jury."²¹ In an appropriate case—imagine a District Court Judge decides to apportion a low percentage of fault to the government or limit damages against it in a way that jurors likely would not—this issue has the potential to form the basis of a strong challenge to a bench verdict consistent with legal principles that are popular among even (and especially) conservative jurists. But make sure to preserve this issue with a proper jury demand. ■

End Notes

1. Grube, Louis E., "The Five W's of Federal Medical Malpractice," *CATA News*, Winter 2023-2024.
2. 42 U.S.C. § 233.
3. 42 C.F.R. § 6.6.
4. 28 U.S.C. § 1346(b).
5. 42 C.F.R. § 6.6(c).
6. 42 C.F.R. § 6.6(d).
7. 28 U.S.C. § 1346(b)(1).
8. *N.B. by Bray v. Bon Secours Mercy Health, Inc.*, 649 F.Supp.3d 631, 636-37 (S.D. Ohio 2023).
9. *Bray v. Bon Secours Mercy Health, Inc.*, 97 F.4th 403, 410 (6th Cir. 2024).
10. *Id.* at 410.
11. *Id.* at 418-20.
12. *Id.* at 419.
13. *Id.*
14. *Id.* at 420.
15. *Id.*
16. *Id.*
17. *Id.* 420-21.
18. *Profitt v. Highlands Hosp. Corp.*, 2024 WL 3622448, *6-7 (6th Cir. Aug. 1, 2024) (Thapar, J., concurring).
19. *Bray* at 421; *Profitt* at *6.
20. *Profitt* at *6; see *Bray* at 421.
21. *Profitt* at *6.



Colin R. Ray is an associate at McCarthy, Lebit, Crystal & Liffman. He can be reached at 216.696.1422 or crr@mccarthylebit.com

Do Parents Have A Claim For Loss Of Filial Consortium Due To Injuries Suffered By Their Adult Child?

By Colin R. Ray

Ohio law recognizes claims for loss of consortium of different groups of individuals, including most familiarly between spouses, but also between parents and children. Specifically, Ohio recognizes the right of parents to recover for the loss of filial consortium.¹ “Filial consortium” is the right of a parent to recover for the injuries sustained by a child, whereas “parental consortium” is the right of children to recover for injuries to a parent. This article is concerned with the right of filial consortium, which appears to be limited to parents of minor children, although some courts have recognized the right of parents to recover for loss of consortium for injuries sustained by adult children. This article will explore the existing case law and whether such a claim may exist.

In *Gallimore v. Children’s Hosp.*², the Ohio Supreme Court first formally recognized the right of parents to recover under a loss of consortium theory for injury to a child. The court noted that under prior existing caselaw as stated in *Kane v. Quigley*,³ in an action by minor children against a female “enticer” who caused a father to leave his family, there was no right of consortium between parents and their child.⁴ In *Gallimore*, the court specifically repudiated *Kane* and noted it had no application in a case where personal injuries existed.⁵ The court then examined *Whitehead v. General Tel. Co.*,⁶ which held that “[w]here a defendant negligently causes injury to a minor child, that single wrong gives rise to two separate and distinct causes of action:

an action by the minor child for his personal injuries and a derivative action in favor of the parents of the child for the loss of his services and his medical expenses.” However, the *Gallimore* court observed that these cases did not distinctly set forth a cause of action for loss of society and companionship.⁷

The court then went on to review the history of the right and devoted substantial discussion to a period in time where “the right of a parent to recover for the loss of an injured child’s ‘services’ (i.e., labor and earnings) is a common-law right which dates back to a period in history when children were viewed as economic assets, and the child’s value to the family was predominantly (if not exclusively) that of a laborer and wage-earner.”⁸ The court went on to opine that “[t]imes have changed and so should the law. Courts and commentators agree that the master-servant analogy to the relationship between parent and child is long overdue for judicial burial.”⁹ The court concluded that

a parent may recover damages, in a derivative action against a third-party tortfeasor who intentionally or negligently causes physical injury to the parent’s minor child, for loss of filial consortium. We further find that “services” are just one aspect of consortium. “Consortium” includes services, society, companionship, comfort, love and solace. Other courts in this state (including the trial court and the court of appeals in the case at bar) have already recognized that such

losses are compensable elements of damage in a parent's derivative action against a third-party tortfeasor.¹⁰

It was against this flexible and progressive backdrop that the issue arose of whether minors who have reached the age of majority may maintain a consortium claim. In *Rolf v. Tri State Motor Transit Co.*,¹¹ a federal district court certified the question of “[c]an an emancipated adult children maintain a claim under Ohio law for the loss of consortium caused by injuries to a parent?” The court answered the certified question in the affirmative, explaining:

There is simply no good reason to afford the personal right of companionship and the parent-child relationship less protection in cases involving adult children who seek to recover for injury to the parent-child relationship. In cases where the parent-child relationship is destroyed or nearly destroyed by the tort of the defendant, the affected children, both minors and adults alike, should be allowed to maintain a cause of action for loss of parental consortium.

Furthermore, while it is true that minor children are more dependent upon their parents to satisfy their basic needs, as noted by one law review article, many adults actually renew their reliance on their parents when they reach middle age. Hammar, *Breaking the Age Barrier in Alaska: Including Adult Children in Loss of Filial Consortium Actions* (1995), 12 Alaska L.Rev. 73, 85. Therefore, just as minor children look to their parents for emotional support, those adult children who continue to enjoy a close relationship with their parents still depend upon their parents for affection, advice, and guidance as

they become older. Consequently, when a parent is seriously injured, the adult child suffers an injury in being deprived of that parent's love and guidance. Therefore, regardless of the age of the child, the loss to the parent-child relationship is real and should not be minimized.

Therefore, we find that it is irrational to deny recovery for loss of parental consortium simply because the child has reached the age of majority. The fact that a child turns eighteen does not erase the need for parental guidance. As one commentator so aptly notes: “The parent-child relationship does not end when the child becomes eighteen. It endures throughout life and can be characterized by love, care and affection for the duration.” *Id.*, 12 Alaska L.Rev. at 83. In that regard, it is important to recognize that “even adult and married children have the right to expect the benefit of good parental advice and guidance.” *Audubon-Exira Ready Mix, Inc. v. Illinois Cent. Gulf RR. Co.* (Iowa 1983), 335 N.W.2d 148, 150, quoting *Schmitt v. Jenkins Truck Lines, Inc.* (Iowa 1969), 170 N.W.2d 632, 665.¹²

Accordingly, after *Rolf*, it seemed the right of parental consortium was firmly entrenched.

A. Several courts decline to identify a right of parental consortium.

This, however, was not the end of the inquiry. Courts now began to consider whether *parents* had claims for loss of consortium based on injuries to their adult children. In *Moroney v. State Farm Mut. Ins. Co.*,¹³ the Fifth District Court of Appeals declined to answer in the affirmative, stating, “we find that the Supreme Court of Ohio specifically stopped short of creating a parental

consortium claim.”¹⁴ The court cited *Gallimore* but then declined to create the right of parental consortium.

The court wrote, “[a]lthough we might be persuaded by appellant's argument, we find that the Supreme Court of Ohio specifically stopped short of creating a parental consortium claim by the language of the footnote and the specific language of the syllabus cited supra. We find this opinion to be consistent with our opinion in *McCartney v. Progressive Casualty Insurance Company* (December 8, 1988), Fairfield App. No. 22- CA-88, 1988 Ohio App. LEXIS 5124.”¹⁵

The Seventh District Court of Appeals also considered the issue and declined to find a claim for filial consortium for injuries to an adult child.¹⁶ The court considered other consortium claims and concluded, “[t]he relationship between parent and adult child does not provide the same basis for relief as that between the spouses, and considerations which are identified under the definition of consortium are not applicable to the relationship between parent and adult child.”¹⁷ The court also rested some of its reasoning on the fact that parents are “entitled to the benefit of the labors of the minor children,”¹⁸ but “have no such right in respect to their adult children.” Finally, the court noted that one other case¹⁹ also agreed there was no right for parents to recover for loss of companionship of their adult children.

B. Second District Court of Appeals recognizes parents' right of consortium for injuries to their adult child.

However, the Second District Court of Appeals reached the opposite conclusion in finding the right of parental consortium to exist. In *Brady v. Miller*,²⁰ the court quoted extensively from *Rolf* and went on to write:

We believe that the foregoing

language applies equally in the present case. Just as the Ohio Supreme Court found in *Rolf* in the context of a parental-consortium claim brought by an adult child, we find that it is irrational to deny recovery for loss of filial consortium simply because the child has reached the age of majority.²¹

The court concluded that “under Ohio common law, Thomas J. Brady and Carole Brady were entitled to maintain a loss-of-consortium claim in connection with the medical malpractice performed on their adult son.”²²

In reaching this conclusion, the Court in *Brady* disagreed with the Fifth District’s analysis in *Moroney*. The court believed “the *Moroney* court read too much into *Rolf*, which in no way disapproved the loss-of-consortium claim now before us.”²³ The court explained that *Rolf* “did not decide whether a parent could maintain a loss-of-consortium claim for injury to an emancipated adult child” because those facts were not at issue in *Rolf*.²⁴ Thus, “[u]nless it wished to render a purely advisory opinion to individuals not before it, the *Rolf* court could not have decided that issue.”²⁵

C. Status of parental consortium moving forward.

As of the time of this writing, none of the three major courts of appeals have ruled on the issue of filial consortium for injuries to adult children. If and when the issue is presented to the First, Tenth, or Eighth Districts, a split of authority will exist, making the case likely to be one in which the Supreme Court of Ohio would be interested. Practitioners would be wise to research the issue thoroughly if presented with it. ■

End Notes

1. “Thus, we now formally recognize the apparently long-existing right of a parent to recover damages for loss of filial consortium.” 67 Ohio St.3d 241 (1993).

2. 67 Ohio St.3d 244 (1993).
3. 1 Ohio St.2d 1 (1964).
4. *Gallimore*. at 9-10.
5. *Id.* at 10.
6. 20 Ohio St.2d 108 (1969).
7. *Gallimore* at 11-12.
8. *Gallimore* at 15.
9. *Gallimore* at 16.
10. *Gallimore* at 18-19.
11. 91 Ohio St.3d 380 (2001).
12. *Rolf* at 382-83.
13. 2002-Ohio-3829 (5th Dist.).
14. In this case, the court referred to the parents’ claim for loss of consortium resulting from their adult child’s injury as loss of “parental consortium” rather than loss of “filial consortium” as used in this article.
15. *Moroney* at ¶11.
16. *Carpenter v. United Ohio Ins. Co.*, 7th Dist. Noble No. 272, 2000 Ohio App. LEXIS 5007.
17. *Id.* at *9 citing *Paroline v. Doling & Assoc.*, 2nd Dist. Montgomery Nos. 11571, 11789, 11919, 1990 Ohio App. LEXIS 4952.
18. *Carpenter*. at *9-10.
19. *McCartney v. Progressive*, 5th Dist. Fairfield No. 22-CA-88 (Dec. 8, 1988), 1988 Ohio App. LEXIS 5124.
20. 2003-Ohio-4582 (2nd Dist.).
21. *Brady* ¶19.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* (*emphasis added*).

Verdict Spotlight

Estate of Thomas Wonders v. Southwest General Health Center, et al.

by Peter W. Marmaros and David A. Kulwicki

On October 3, 2024, a Cuyahoga County jury returned a \$4,050,000.00 verdict in favor of the Plaintiffs in *Estate of Thomas Wonders v. Southwest General Health Center, et al.* The Plaintiffs were represented by Pete Marmaros of Djordjevic & Marmaros and Dave Kulwicki of Mishkind Kulwicki Law.

This case arose out of the death of Thomas Wonders, age 59, at University Hospitals - Main Campus on January 1, 2019. Plaintiffs alleged that three family practice doctors failed to diagnose or even test for a staph infection that debilitated Mr. Wonders in the Fall of 2018.

At that time, Mr. Wonders was a healthy 58-year-old father and husband. In late October and early November, 2018, Mr. Wonders made four visits to local emergency departments for symptoms that included severe neck pain. On the final visit, the ER physician obtained a urine culture, which grew Staph A bacteria two days later, and obtained a CT scan that showed signs of pneumonia. In addition, blood work results showed abnormally high inflammatory markers, which are non-specific but are often elevated due to infection. Based on the abnormal test results reported during the final ER visit, Mr. Wonders was advised by the ER physician to follow up with his primary care doctor.

Mr. Wonders' primary care doctor was on vacation, so he scheduled an appointment with another physician in his primary care doctor's office. Between November 7 and November 14, 2018, Mr. Wonders saw three different family practice doctors employed by the primary care practice, Southwest Family Practice. The first two family practice doctors did not review Tom's records or test results from the previous ER visits. The third family practice doctor that saw Tom reviewed some of the prior ER information but did not act on it. During this time period, Tom progressed from



Peter W. Marmaros and David A. Kulwicki

being able to walk to being confined to a wheelchair due to the debilitating effects of systemic infectious arthritis. All of the defendant physicians attributed Tom's sudden decline to osteoarthritis or an unspecified rheumatological disorder.

Mr. Wonders returned to the ER a few days after his last visit with the family practice doctors. He was promptly admitted to the hospital. There, he was seen by an infectious disease doctor. The infectious disease doctor diagnosed Tom with a "high-grade" staph infection. By then, the staph infection had seeded throughout his body, including his lungs, bones, joints and heart. The infection was severe enough to destroy the valves in his heart and eat away at his vertebrae. In addition, unbeknownst to anyone, it had weakened the wall of a major blood vessel in his brain, thereby creating a specific type of infection-related aneurysm called a mycotic aneurysm.

On December 31, 2018, Tom was rehabilitating in a nursing home, and waiting to undergo heart surgery in January to repair his damaged heart valves caused by the infection. On that date, he developed a severe headache. The aneurysm burst, resulting in a fatal brain bleed. Mr. Wonders died of complications of the burst aneurysm on New Years Day, 2019.

The Wonders family brought suit against the three family practice doctors. The case was re-filed after the Wonders' original lawyer withdrew from the case. The family practice physicians defended their care by arguing that Mr. Wonders' presentation was very unusual in that he did not have any of the classic signs of an infection, such as fever, increased pulse or elevated white count. They argued that it is very rare for healthy adults to develop a staph infection without a defined point of entry like a catheter or PICC line. They argued that his severe joint pain was readily explained by orthopedic problems that he had, including arthritis in his neck seen on x-rays. They also argued that it is impossible to know when the aneurysm developed, but that it is a rare complication that could not be foreseen by any healthcare provider. They questioned why the family practice doctors were the target of the lawsuit when the infection was also missed by 4 ER doctors and other healthcare providers. Finally, they blamed Tom for not seeking treatment sooner when he developed the severe headache leading up to the ruptured aneurysm.

The case was tried to a jury for seven days, culminating in a plaintiff's verdict. The jury verdict in the amount of \$4,050,000.00 exceeded the available insurance coverage by \$50,000.00. The parties agreed to settle the case, thereby avoiding appeal, setoffs for caps and other post-trial issues, for payment in the amount of \$4,050,000.00.

There were four strategies that we think were effective. First, Pete used "Sari's funnel" in voir dire, a technique promoted by jury consultant Sari de la Motte. The funnel technique is used to get jurors to guess about what the defendants must have done wrong. When their guess is validated in the opening statement, they tend to latch on to that narrative for the rest of the trial.

Second, we used a 10' timeline that we pulled out during every phase of the trial. Pat Murphy at Video Discovery was great to work with as we went through 15 drafts of the timeline leading up to trial and Pat cranked them out without delay as we honed it. Timelines are so essential in delayed diagnosis cases. It was important to have the timeline in a non-digital format so the jury could see the whole case laid out before them as different aspects of the trial were discussed. We displayed individual records on the smart board but always kept the timeline open so the records were in context. The jury

asked for the timeline shortly after they retired to deliberate.

A third strategy was our response to the defense attribution bias that is hard-wired into every delayed diagnosis case. To defuse this bias, we focused the case on the defendants' conduct. Further, we emphasized that the defendants did something much worse than failing to do their job; they deceived Tom so that he did not seek proper care elsewhere. This is a "betrayal theme" that also disarms defense attribution bias.

Finally, we worked really hard to simplify the case. We did this by avoiding a lot of medical talk, even to the point of underutilizing some helpful but complex facts like elevated inflammatory markers and the left shift in the differential. Instead, we focused on the stuff that jurors already know: "if you don't look, you won't see," and staph infections in the blood are deadly if not treated. Causation was the weaker aspect of this case but it never became a significant issue as we stayed on message and the message was simple. ■

Peter W. Marmaros, is a partner at Djordjevic & Marmaros, L.L.C. He can be reached at 216.781.4900 or pete@dcmlaw.org.

David A. Kulwicki, is a partner at Mishkind Kulwicki Law Co., LPA. He can be reached at 216.595.1900 or dkulwicki@mishkindlaw.com.

Verdict Spotlight

John Remali, et al. v. University Hospitals Health System, et al.

by Stuart E. Scott and Michael P. Lewis

A Cuyahoga County jury returned a \$1.5 million verdict on April 29, 2024 against David Marsh, M.D. and University Hospitals' Center for Orthopedics for Dr. Marsh's failure to obtain informed consent when prescribing a removable orthopedic boot to treat the plaintiff's mild ankle fracture.

The plaintiff, who became diabetic as a result of exposure to Agent Orange during the Vietnam War, was never told that he could develop non-healing pressure ulcers from wearing the boot, or that his minor ankle fracture would heal with nothing more than rest. Unfortunately, pressure ulcers did develop, and the plaintiff's left leg was amputated below the knee.

To prevail on his claim for lack of informed consent, the plaintiff had to prove that Dr. Marsh failed to discuss the risks, benefits, or alternatives to wearing the boot, and that if he had, the plaintiff would have refused to wear it.

The evidence at trial showed that Dr. Marsh had no discussion with the plaintiff about the risks of wearing the boot, any of the plaintiff's pre-existing conditions, or any treatment alternatives. In fact, the plaintiff testified that Dr. Marsh never even came into the exam room – he simply stuck his head in the doorway to say, "We're gonna put a boot on it."

Dr. Marsh did not dispute that informed consent was required, or that the plaintiff's pre-existing conditions put him at increased risk for the development of non-healing ulcers and amputation. All experts agreed that diabetics with peripheral vascular disease could develop non-healing pressure ulcers within twenty-four hours of wearing an orthopedic boot.

However, Dr. Marsh testified on cross-examination that he delegated the job of obtaining informed consent to his orthopedic technician. The plaintiff called that technician to testify, but she knew nothing about this arrangement. She was unaware that the plaintiff suffered from diabetes and peripheral vascular disease and could not articulate any of the material risks associated with him wearing the boot. According to the plaintiff and his son, who attended the initial appointment with Dr. Marsh, this technician only told them how to tighten the boot and that they should not remove the boot. The plaintiff

followed these instructions and did not remove the boot for two weeks.

Dr. Marsh also admitted that the plaintiff's minor ankle fracture would have healed without an orthopedic boot. All it required was rest. Alternatives to treatment included using a walker, cane, or wheelchair – items the plaintiff had at home already. Dr. Marsh discussed none of these options with his patient. In their tear-filled, emotional testimony, the plaintiff and his wife told the jury that they never would have agreed to use the boot if they had known the significant risks and safer alternatives.

After a five-day trial, the jury returned a verdict in favor of the plaintiff, finding that Dr. Marsh failed to obtain informed consent because he did not discuss the plaintiff's "medical conditions and the impact those conditions might have on wearing a walking boot." The jury found the plaintiff 25% at fault for not removing the boot, and also found Dr. Marsh liable on a separate claim for medical negligence, as well.

The case was tried by Stuart Scott and Michael Lewis of the Spangenberg, Shibley & Liber law firm.

The case is *John Remali, et al. v. University Hospitals Health System, et al.*, Cuyahoga County, Case No. CV-22-962868. ■



Stuart E. Scott



Michael P. Lewis

Stuart E. Scott is a partner at Spangenberg, Shibley & Liber, LLP. He can be reached at 216.696.3232 or sscott@spanglaw.com.

Michael P. Lewis is an associate with Spangenberg, Shibley & Liber, LLP. He can be reached at 216.696.3232 or mlewis@spanglaw.com.

Recent Ohio Appellate Decisions

by Brian W. Parker and Louis E. Grube

Schleich v. Penn Cent. Corp., 2024-Ohio-5005 (8th Dist. Oct. 17, 2024)

Disposition: Trial court orders excluding expert testimony connecting benzene/diesel exhaust to acute promyelocytic leukemia ("APL") and granting summary judgment on claims pled under the Federal Employers' Liability Act ("FELA") and the Locomotive Inspection Act ("LIA") were affirmed.

Topics: Toxic tort, benzene, diesel exhaust, expert witness qualification, admission of expert testimony, *Daubert* standard, summary judgment.

Plaintiff, who worked for the defendants as a fireman, engineer, and road foreman, claimed to have been exposed to benzene in diesel exhaust. He pled claims under FELA and LIA after contracting APL, which is "a subtype" of acute myeloid leukemia ("AML"). The defendant railroads and their insurer sought to exclude testimony from the plaintiff's medical causation expert, who testified that benzene inhalation exposure through work around diesel exhaust was "a cause or contributing factor in the development" of the APL condition. And they moved for summary judgment premised upon the absence of medical causation testimony.

The trial court excluded the medical causation testimony, finding that the plaintiff's expert had not provided a "meaningful explanation" for how he had reached his conclusion, nor had he properly found and analyzed scientific literature supporting that conclusion, leading to an unreliable opinion. Particularly, the trial court highlighted that the plaintiff's expert had not been aware of "any study that states that exposure to diesel exhaust can cause APL." The plaintiff conceded that summary judgment would be proper if this evidence was excluded, and judgment as a matter of law was awarded to the defendants after the expert testimony was excluded.

The court of appeals affirmed after the plaintiff appealed. It first explained that medical causation evidence is indispensable for establishing general causation in toxic tort claims. And it reviewed the decision to exclude the plaintiff's expert testimony for an abuse of discretion in applying the Evid.R. 702 standards. The court of appeals started with the reliability ruling, declining to disagree with the way that the trial court considered the issue. It particularly relied upon the fact that the expert "did not track or otherwise maintain

the list of the search terms he used or the results from his searches" on "Google and PubMed." And while he relied upon findings from the International Agency for Research on Cancer ("IARC") that diesel exhaust is a carcinogen, he had failed to address literature from that organization noting an absence of evidence of a causal connection between diesel exhaust and cancers like leukemia. The court of appeals found noteworthy an observation by the trial court that "[w]hen a scientist claims to rely on a method practiced by most scientists, yet presents conclusions that are shared by no other scientist," a court "should be wary that the method has not been faithfully applied."

Orac v. Montefiore Found., 2024-Ohio-4904 (8th Dist. Oct. 10, 2024)

Disposition: Trial court order granting summary judgment in favor of defendant nursing home under *Wuerth/Clawson* principles was reversed, and the matter was remanded for further proceedings.

Topics: Nursing home liability, wrongful death, respondeat superior following *Wuerth/Clawson*, summary judgment.

The plaintiff alleged her spouse died as a result of "negligent failure to provide 'competent, safe and acceptable medical, nursing, and health care'" at her nursing home. Medical negligence claims were pled against the nursing home and a nurse practitioner. The plaintiff also pursued relief under the Nursing Home Resident's Bill of Rights statute, R.C. 3721.13(A)(3), which guarantees not just "adequate and appropriate medical treatment and nursing care" but any "other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted."

Defendant nursing home moved for summary judgment claiming that it had not employed the nurse practitioner and no specific employee had been identified as the negligent individual supporting respondeat superior liability, thus asserting entitlement to dispositive relief under *Clawson v. Hts. Chiropractic Physicians, L.L.C., 2022-Ohio-4154*. The trial court granted this motion, and it further awarded summary judgment to the nurse practitioner on account of an inadequate expert report and affidavit. On appeal, plaintiff assigned each of these rulings as error.

The Eighth District Court of Appeals affirmed summary judgment as to the nurse practitioner but reversed as to the nursing home. After a detailed description of the common law and unique rulings in *Clawson* and *Natl. Union Fire Ins. Co. v. Wuerth*, 2009-Ohio-3601, the unanimous panel ruled that it would not extend these cases beyond their explicit principles and the classic common law rule. Specifically, *Losito v. Kruse*, 136 Ohio St. 183, 187 (1940), remains good law in the Eighth District, in which it was held: "For the wrong of a servant acting within the scope of his authority, the plaintiff has a right of action against either the master or the servant, or against both." The panel followed rulings issued from other intermediate appellate districts after *Wuerth*, all left undisturbed by *Clawson*, ruling that *Wuerth* was "inapplicable as to claims against hospitals and their nonphysician employees." The panel also declined to require a plaintiff to include an employee in an action under the Nursing Home Resident's Bill of Rights, as nothing in that law would require a plaintiff to establish agent-liability to prevail against a principal nursing home.

.....
Cook v. M-F Transport, Inc., 2024-Ohio-4678 (8th Dist. Sept. 26, 2024).

Disposition: Affirming denial of defendants' motion for JNOV where trial court permitted jury to reconvene to correct error in verdict forms shortly after having been discharged.

Topics: Waiver; plain error; trial court's limited inherent authority to reconvene jury after formal discharge to correct error on jury interrogatories and verdict forms.

Kathleen Cook's vehicle was forced off an overpass on I-90 when struck by a truck operated by Gary Delgaudio, an employee of M-F Transport, Inc. Delgaudio claimed he struck Mrs. Cook's vehicle because his truck had been struck by a driver to his left, Jerome Bryant. Mrs. Cook and her husband, Marcus Cook, sued Delgaudio, M-F Transport, and Bryant, but subsequently dismissed Bryant without prejudice. The case went to trial solely against Delgaudio and M-F Transport. The jury returned a verdict against the defendants, assigning 30% fault to the defendants and 70% fault to Bryant. The jury interrogatories and verdict forms indicated the jury awarded \$260,400 to Mrs. Cook and \$22,500 to Mr. Cook.

After the jury was discharged, all but one of the jurors accepted the judge's invitation to come back to chambers for an informal discussion and to answer any questions. When the judge explained that the damage awards would be reduced

by the percentage of fault assigned to the defendants, the jurors "'started to mumble or mutter' and expressed that they had already reduced the damages in the verdict forms to an amount that equaled '30 percent of what they thought [the plaintiffs'] total damages were.'" *Cook* at ¶8. The court then sent the remaining seven jurors back to the jury room with blank forms to accurately reflect their intended award, then returned to the courtroom to speak with the attorneys. The court explained what had transpired and gave the parties the opportunity to raise any concerns, but neither party objected. The jury then returned with corrected forms awarding Mrs. Cook \$868,000 and Mr. Cook \$75,000. The court then reduced the awards according to the fault apportioned to the defendants, and entered judgment for Mrs. Cook in the amount of \$260,400, and for Mr. Cook in the amount of \$22,500.

The defendants later filed a motion for JNOV protesting the court's actions in reconvening the jury with only seven jurors and in entering judgment on the corrected verdict. The plaintiffs opposed the motion, arguing the defendants waived all but plain error, that the trial court was permitted to recall the jury to correct the forms to conform to the jury's true intent, and that the defendants acquiesced to the final verdict being returned in the absence of the eighth juror.

The trial court denied the JNOV motion, and the Eighth District affirmed. The appellate court found that by not making a timely objection on the record, the defendants waived all but plain error, and that "the delayed arguments raised in the motion for JNOV did not preserve an objection for the purposes of this appeal." *Id.* at ¶21. The court noted that "the plain-error doctrine is not readily invoked in civil cases" and "'is sharply limited to the extremely rare case involving exceptional circumstances where [the] error*** seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.'" *Id.* at ¶24, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

The court acknowledged the general rule that once a jury is discharged it cannot be reconvened. The court noted, however, that a number of cases, including *Dietz v. Bouldin*, 579 U.S. 40 (2016), have held that trial courts have limited inherent authority to reconvene a discharged jury to correct an error in the verdict forms. The court concluded that the trial court did not commit plain error "when it exercised its inherent authority to control its docket after discovering an error in the jury's verdict." *Id.* at ¶39. The court also found that there was "no plain error in the trial court's decision to allow less than eight jurors to deliberate after the mistake

in the original verdict was brought to the court’s attention” and that “the absence of the missing juror did not affect the outcome of the proceedings.” *Id.* at ¶40.

Bechtel v. Multi-Cast Corp., 2024-Ohio-3426 (6th Dist. Sept. 6, 2024).

Disposition: Affirming the trial court’s order granting the defendant employer’s motion for summary judgment on the employee’s workplace intentional tort claim.

Topics: Employer intentional tort action under R.C. § 2745.01; what constitutes deliberate removal of an equipment safety guard; and what constitutes an employer’s deliberate intent to injure the employee.

The employee suffered an amputation of one finger, and an injury to another finger while he was using a table saw without a splitter/spreader or anti-kickback safety device. The evidence showed that other employees had periodically removed such safety devices, but there was no evidence that such removal was done or ordered by the employer’s management. There was also evidence that the plaintiff was wearing gloves at the time of the accident, and that the glove material may have gotten caught up in the saw blade while the plaintiff was attempting to make a cut of insulation with the table saw.

The plaintiff recovered workers compensation benefits for his injuries, including a VSSR award because the table saw did not have an “anti-kickback or spreader device” at the time of the employee’s injury. The trial court granted the employer’s motion for summary judgment in the employer intentional tort action.

On appeal, the employee argued that he was entitled to a presumption that the employer acted with deliberate intent to injure him when it failed to install, repair, or replace the splitter and anti-kickback safety device on the table saw. The Sixth District rejected this argument, reasoning that even if these protections constituted an equipment safety guard under R.C. § 2745.01(C), there was no evidence that the employer deliberately removed it.

The Court held that to meet this deliberate removal requirement, the employee must have shown that the removal occurred at the direction of management; the mere fact that it was removed by various employees and a manager/supervisor when they operated the saw was insufficient to meet this requirement. Moreover, the employee’s evidence could not support a finding that the employer made a careful and thorough decision to get rid of, or eliminate, the safety device.

The Sixth District also rejected the employee’s argument that the employer’s actions amounted to a deliberate intent to injure him under R.C. § 2745.01(A). The Court held that the most that could be said of the employer’s intent was that it was aware that the safety device was missing, and that it knew this presented its employees with a dangerous condition. This, however, did not constitute “deliberate intent.”

Gray v. Cincinnati Children's Hosp. Med. Ctr., 2024-Ohio-3168 (1st Dist. Aug. 21, 2024).

Disposition: Trial court order granting summary judgment in favor of medical malpractice defendants was affirmed.

Topics: Expert disclosure and report deadline, substitution of counsel, excusable neglect, abuse of discretion.

Plaintiff’s child passed away after a surgery and hospitalization, leading her to file medical malpractice claims against a number of practitioners and the hospital. The trial court’s scheduling order set a deadline for disclosure of expert witnesses and their reports, and it threatened exclusion of experts if the plaintiff failed to comply with the deadline. This order went out three days after the Plaintiff substituted new counsel. The Plaintiff’s deadline came and went without any expert disclosure.

The defendants all jointly moved for summary judgment after the Plaintiff’s expert disclosure deadline passed. Plaintiff opposed the motion, separately submitting an unsworn expert disclosure at the same time. This was just a listing of opinions the expert would give during a trial, and there was no affidavit from the expert incorporating those opinions. It was effectively a summary from counsel. Counsel claimed excusable neglect in failing to comply with the disclosure deadline, denying that they had received notice of the deadline.

The trial court rejected counsel’s claims of inadvertence, enforced the threat of exclusion of expert witnesses, and granted summary judgment in favor of the defendants. The First District Court of Appeals then affirmed. While the summary judgment ruling was reviewed de novo, the decision to exclude evidence and reject counsel’s excuses for failing to meet the disclosure deadline were treated as discovery rulings, reviewable only for an abuse of discretion. The record showed that the new attorney had been involved in the process of setting a case schedule. The court of appeals presumed regularity insofar as the record reflected that new counsel had filed a notification form with all contact information before the case schedule went out. No request for additional time

had been filed under Civ.R. 56(F). And the disclosure that was filed failed to meet the standard for expert reports in Civ.R. 26(B)(7) or the basic evidentiary standard of Civ.R. 56(E). The disclosure would therefore have been inadequate to oppose summary judgment even if it had been timely.

Separately, the Plaintiff argued the "common knowledge" exception to the requirement that medical malpractice claims must be supported by expert testimony. "Under the common knowledge exception, 'matters of common knowledge and experience, subjects which are within the ordinary, common and general knowledge and experience of mankind, need not be established by expert opinion testimony.'" *Id.* at ¶37. The court of appeals reviewed the course of medical treatment and concluded that the "complex medical terms, conditions, and modes of treatment" at issue would not "fall within the ambit of the average person's knowledge." *Id.* at ¶41.

Toth v. J.B. Food Serv., Inc., 2024-Ohio-3077 (7th Dist. Aug. 12, 2024).

Disposition: Reversing summary judgment for the defendant.

Topics: Actual and constructive notice in a premises liability action; admissibility of a statement of fact made by an employee concerning a matter within the course of their employment under Evid. R. 801(D)(2)(d).

The plaintiff was a customer at a Subway restaurant when a display rack holding snack chips fell on her leg and foot. While a Subway employee was assisting the plaintiff after the accident, the employee stated that the rack had previously fallen on another customer. The plaintiff did not write this statement on the incident report she filled out on the day of the accident. However, subsequently, on her copy of the incident report, the plaintiff did make note of the employee's statement. The plaintiff also testified to this fact at her deposition.

The Subway restaurant moved for summary judgment, which the trial court granted. The trial court ruled that the alleged comment by the Subway employee about prior incidents with the rack was inadmissible hearsay under Evid. R. 801(C), and could not be used to create a genuine issue of material fact because the statement was not made by the Subway employee while testifying at trial or a hearing, and the statement was offered to prove the truth of the matter asserted in the statement.

On appeal, the Seventh District reversed. The Court held that the Subway employee's statement about previous

incidents with the rack was admissible under Evid. R. 801(D)(2)(d) because it was a statement of fact made by the Subway employee concerning a matter within the scope of her employment. Moreover, the employee's statement was one of fact, not of opinion as to the Subway restaurant's liability in this incident.

Subway attempted to nullify this evidence by offering testimony from one of the restaurant's owners that he had no knowledge that the rack had previously fallen. Thus, the Subway restaurant contended that it had no actual or constructive notice of the danger posed by the rack. The Seventh District held that the Subway owner's statement merely created a genuine issue of material fact for resolution at trial regarding the issue of actual or constructive notice.

Steigerwald v. City of Berea, 2024-Ohio-2260 (8th Dist. June 13, 2024).

Disposition: Reversing trial court's ruling which had granted summary judgment to the defendant-appellee, the City of Berea.

Topics: Whether political subdivision immunity exists for governmental function involving a disputed physical defect on the premises under R.C. 2744.02(B)(4); whether the defendant had notice of such a defect; whether the defect was "open and obvious;" whether immunity was reinstated for discretionary acts; and whether a pre-accident release of liability was enforceable.

The plaintiff was an 83-year-old regular participant in a swim class for senior citizens at the Berea Recreation Center, operated by the City of Berea. The recreation center had recently undergone some remodeling which included new benches in the women's locker room that had "extended legs." A little more than a week after the remodeling was completed, the plaintiff entered the locker room and tripped on the extended legs of one of the new benches. She suffered serious injuries, followed by death within two weeks after her fall.

The plaintiff brought suit against the City, claiming that it had recklessly purchased benches with extended legs and had placed them in a narrow locker room, thereby creating a safety hazard. After the close of discovery, the defendant City moved for summary judgment, contending *inter alia*, that no exception applied to remove the City's political subdivision immunity under R.C. § 2744, that it had no notice of the danger posed by the bench, and the bench was an "open and obvious" hazard.

The City also argued that if there were a removal of its immunity, that immunity was reinstated because of its discretionary act. Finally, the City argued that regardless of the immunity question, the pre-accident waiver of liability signed by the decedent was enforceable and barred plaintiff's recovery. The trial court granted the City's motion for summary judgment.

On appeal, the Eighth District reversed, first holding that the bench constituted a "physical defect," and thus there was an exception to the City's immunity under R.C. § 2744.02(B)(4). The Court relied on expert architectural evidence averring that the legs of the bench extended into the normal, expected and foreseeable area of anyone walking by the bench in a narrow locker room. The Court further relied on the affidavit or deposition testimony of at least 14 patrons of the recreation center, several of whom testified that they had also tripped over the benches.

Because two of the 14 complainants had filed written complaints prior to the plaintiff's decedent's fall, the Eighth District also found that the notice requirement was met. The Court also found that attendant circumstances existed to defeat the open and obvious doctrine. In so finding, the Court again relied on plaintiff's architectural expert who testified that the legs of the bench were not open and obvious because the legs were obscured by the bench seating surface, and by other occupants of the locker room, together with their clothes and belongings.

In addition, the Eighth District found that there was a question of fact remaining as to whether the City's selection of the bench for the locker room was a discretionary act so as to restore immunity under R.C. § 2744.03(A)(5). Finally, the appellate court found that there were genuine issues of material fact as to whether the pre-accident release of liability signed by the plaintiff's decedent was enforceable, as there was a question whether the release was ambiguous or too general.

.....
Robinson v. City of Cleveland, 2024-Ohio-969 (8th Dist. March 14, 2024).

Disposition: Affirming the trial court's denial of the motions for summary judgment filed by the defendants City of Cleveland, and individual police officer.

Topics: City's political subdivision immunity for police officer allegedly responding to an emergency call under R.C. § 2744.02(B)(1)(A); police officer's individual immunity under R.C. § 2744.03(A)(6).

The plaintiffs were the driver and occupant of a vehicle which was struck by a police vehicle at an intersection. At the time of the accident, the plaintiff vehicle had a green light when it entered the intersection. Although the police vehicle did not have its emergency lights on, the police officer testified that he was proceeding to the site of another motor vehicle accident. The police officer testified that he looked at the intersection before he entered it, but did not see the plaintiff vehicle.

The plaintiffs brought suit, and the defendants City of Cleveland and the police officer moved for summary judgment. The defendants contended that they were each entitled to political subdivision immunity under R.C. § 2744 because the police officer was responding to an emergency call. The trial court denied both defendants' motions for summary judgment.

The Eighth District noted that while the City's initial cloak of immunity was waived by R.C. § 2744.02(B)(1) for the police officer's negligent operation of a motor vehicle, the question remained as to whether the City had a full defense to this liability under R.C. § 2744.02(B)(1)(a) for the police officer's responding to an emergency call. Under the statute, an "emergency call" is a "call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer."

The Eighth District noted that while the emergency call issue may be determined as a matter of law when there are no triable questions of fact present, that was not the situation in the case before it. The only evidence in support of the City's position was the police officer's deposition testimony that "I remember I was responding to an auto accident, unknown – I can't remember the location I was responding to." The Court held that the police officer's testimony, without evidence that he was responding to a citizen or a police dispatcher's request, or even acting on his own personal observation, was insufficient to meet the City's initial burden of proof on summary judgment.

Regarding the officer's own immunity from liability under R.C. § 2744.03(A)(6), the Court held that the police officer's failure to engage his emergency lights or sirens, as required by his training, and his quick scan of the intersection before entering it, raised a genuine issue of material fact as to whether his actions were wanton or reckless. As such, the trial court did not err in denying the individual officer's motion for summary judgment, either.

Marzan v. Univ. of Cincinnati, 2024-Ohio-857 (Ct. of Claims, Feb. 23, 2024).

Disposition: Granting summary judgment to defendant university/employer where plaintiff student/employee was injured on his way to his on-campus job.

Topics: Workers compensation immunity under R.C. § 4123; open and obvious doctrine.

The plaintiff, a student at the defendant university, was employed in a work study position at the university's Learning Commons. At the time of his accident, the plaintiff was walking along a walkway leading to the Learning Commons where he was going to report for work. The plaintiff tripped and fell when he was just about to walk into the building, only a few feet away from the front doors.

The university moved for summary judgment in the student's lawsuit, contending that it was entitled to workers compensation immunity. The Court of Claims noted the general "coming and going" rule, that injuries sustained while traveling to and from a fixed place of employment are not generally compensable because commuting is considered a private activity, not one undertaken for the employer.

However, the Court further noted the "zone of employment" rule by which the course of employment includes injuries occurring at both the place of employment, and the means of ingress and egress which are under the employer's control.

The zone of employment rule has been applied before, during, and after an employee's work hours. In this case, the plaintiff was injured while walking on a walkway just a few feet from the front doors that were his normal means of ingress and egress to his job. Therefore, because the student/employee's injury occurred in the course of his employment, and the university was at all relevant times a participant in the Ohio Workers' Compensation program, the university was immune from liability under R.C. § 4123.74.

The Court of Claims went on to hold that, even if the university were not entitled to summary judgment under R.C. § 4123.74, the university was nonetheless entitled to summary judgment based on the "open and obvious" doctrine. Rather than looking at the walkway, which the plaintiff knew to be uneven, at the time of his fall the plaintiff was looking at the front doors of the building where he worked. Moreover, there were no "attendant circumstances" that distracted his attention when he fell. ■

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



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

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

CATA VERDICTS AND SETTLEMENTS

Case Caption: _____

Type of Case: _____

Verdict: _____ **Settlement:** _____

Counsel for Plaintiff(s): _____

Law Firm: _____

Telephone: _____

Counsel for Defendant(s): _____

Court / Judge / Case No: _____

Date of Settlement / Verdict: _____

Insurance Company: _____

Damages: _____

Brief Summary of the Case:

Experts for Plaintiff(s): _____

Experts for Defendant(s): _____

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

Nurenberg, Paris, Heller & McCarthy Co., LPA

600 Superior Avenue, E., Suite 1200

Cleveland, Ohio 44114

(216) 621-2300; Fax (216) 771-2242

Email: kstjohn@nphm.com

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.

John Doe v. ABC Children's Hospital

Type of Case: Medical Malpractice

Settlement: \$7.5M

Plaintiff's Counsel: Steve Crandall, Crandall & Pera Law,
(216) 538-1981

Defendant's Counsel: Anonymous Settlement

Court: Pre-Suit Settlement

Date Of Settlement: October 1, 2024

Insurance Company: Self-Insured

Damages: Brain damage and seizure disorder

Summary: Plaintiff was referred by his pediatrician to a pediatric neurologist due to milestone regression, enlarging head circumference and neurologic complaints. Despite a year and a half of treatment, no head MRI was ever completed. The defendants fixed on an odd diagnosis and only imaged the spine. Eventually seizures, brain imaging and emergency surgery revealed hydrocephalus due to a rare cystic lesion in the brain.

Plaintiff's Experts: Dr. Stephen Nelson (Pediatric Neurology); Dr. Will Gump (Pediatric Neurosurgery); and various other damages experts.

Defendant's Expert: None provided

Estate of Jane Doe v. ABC Hospital

Type of Case: Medical Negligence

Settlement: \$2.95 Million

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

Defendant's Counsel: Withheld

Court: Withheld

Date Of Settlement: September 2024

Insurance Company: Withheld

Damages: Death

Summary: Decedent, a married 39-year-old mother of two, presented at the emergency department at a community hospital with abdominal pain and altered mental state. An incidental finding on CT imaging of the abdomen suggested thoracic aortic dissection which was interpreted by the radiologist as artifact. Decedent remained in the emergency department for several hours until a hospitalist over-read the earlier imaging study and became concerned about the suspicious finding. The patient was transported to a tertiary care facility where she died a few hours after arrival. The challenge in the case was overcoming a causation defense supported by the Decedent's early development of mesenteric

ischemia, a complication of aortic dissection which carries a high mortality rate. Her symptoms suggested she had already developed mesenteric ischemia by the time she presented at the emergency department.

Plaintiff's Experts: Withheld

Defendant's Experts: Withheld

Estate of John Doe v. ABC Employer

Type of Case: Employer Intentional Tort

Settlement: \$1,500,000

Plaintiff's Counsel: David R. Grant and Frank L. Gallucci III, Plevin & Gallucci Co., L.P.A., (216) 861-0804

Defendant's Counsel: Withheld

Court: Franklin County

Date Of Settlement: September 2024

Insurance Company: Self-Insured

Damages: Wrongful death

Summary: Decedent was buried alive after entering a hopper to dislodge material.

Plaintiff's Experts: Thomas Huston, Ph.D., P.E., CSP (Engineer and Safety Expert); Jack Spadaro (Mining Expert); Vickie Willard, D-BFDE (Handwriting Expert); David Boyd, Ph.D. (Economics); Kent Harsbarger, M.D., J.D.; and Bryan Castro, M.D.

Defendant's Expert: Jason E. Henthorn

Jane Doe v. Alpha, MD, Inc. and Beta Pharmacy, Inc.

Type of Case: Medical Malpractice Wrongful Death and Survivorship

Settlement: \$1,400,000.00

Plaintiff's Counsel: George E. Loucas, John Burnett, Loucas Law, LPA, (216) 834-0400

Defendants' Counsel: Confidential

Court: Confidential

Date Of Settlement: Fall 2024

Insurance Company: The Doctor's Company

Damages: 64-year old decedent with surviving wife and two adult children; laid off

Summary: Alleged over prescribing and wrongful dispensing of prescription painkillers, resulting in opiate use disorder and death from overdose.

Plaintiff's Experts: Bill Santoro, M.D. (Addiction); Howard Taylor, Ph.D. (Toxicology); Karen Ryle, R.Ph. (Pharmacy); Dr. John Burke (Economist, loss of services and income)

Defendants' Experts: Daniel Krinsky, R.Ph. (Pharmacy); James Murphy, M.D. (Pain Medicine); and John Markowitz, Pharm.D. (Pharmacy)

.....
Jane Doe, et al. v. Alpha, MD, Inc.

Type of Case: Medical Malpractice
Settlement: \$725,000.00
Plaintiff's Counsel: George E. Loucas, John Burnett, Loucas Law, LPA, (216) 834-0400
Defendant's Counsel: Confidential
Court: Confidential
Date Of Settlement: Fall 2024
Insurance Company: The Doctor's Company
Damages: 71-year old retired widow with three adult children

Summary: Alleged over prescribing of prescription painkillers, resulting in opiate use disorder, overdoses and suicide attempts.

Plaintiffs' Experts: Bill Santoro, M.D. (Addiction); Dr. John Burke (Economist, Loss of Services and Income); and Ryan Mekota, PsyD (Neuropsychology)
Defendant's Experts: Joshua Barash, M.D. (Family Medicine); and Elie Aoun, M.D. (Forensic Psychiatrist)

.....
Jane Doe v. ABC Trucking Company, et al.

Type of Case: Truck Crash
Settlement: \$2,000,000.00
Plaintiff's Counsel: Jordan D. Lebovitz, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Avenue, E., Suite 1200, Cleveland, Ohio 44114, (216) 694-5257
Defendants' Counsel: Withheld
Court: Northwest Ohio
Date Of Settlement: August 12, 2024
Insurance Company: Withheld
Damages: Fractured pelvis and degloving injury to lower extremity

Summary: Plaintiff was a pedestrian attempting to cross the street when she was struck by a commercial truck. Liability was disputed.

Plaintiff's Expert: Andrew Rich (Crash Reconstruction)
Defendants' Expert: **

.....
Crystal Hernandez, as Administrator of the Estate of John Hernandez v. Mercy Health-Allen Hospital, LLC, et al.

Type of Case: Medical Malpractice / Wrongful Death
Settlement: \$1,500,000.00

Plaintiff's Counsel: Kristin Roberts and Charles Kampinski, Kampinski & Roberts, (440) 597-4430
Defendants' Counsel: Erin Hess, William Bonezzi, Jane Warner, and Jessica Jackson

Court: Lorain County Common Pleas Case No. 21 CV 203532

Date Of Settlement: August 6, 2024

Insurance Company: NES Americas, Inc., Bon Secours Mercy Health

Damages: Wrongful Death

Summary: A 45-year old man with a medical history of obesity, diabetes, and hypertension presented to the ER with shortness of breath, cough, and chest pain which had worsened significantly since it started weeks earlier. No one at the ER documented his medical history anywhere in his medical chart. The patient's vital signs demonstrated that he was tachycardic and hypertensive. Defendant ER physician, instead of performing a thorough workup in order to rule out life-threatening illnesses and diagnose and treat the source of the patient's symptoms, performed only a chest x-ray and COVID test (which was negative), and discharged him in less than an hour with only an antibiotic and no diagnosis. The chest x-ray showed cardiomegaly (an enlarged heart) but was ignored and the patient was not told. No blood work or further testing was done. Less than 24 hours later, the patient suffered cardiopulmonary arrest while at home and passed away, leaving behind his wife and two adult children.

Plaintiff's Experts: Jason May, MD; and Harvey Rosen, Ph.D.

Defendants' Experts: Angelo Canonico, MD; David Coven, MD; Seth Womack, MD; Jason McMuller, MD, and Mark Cowan, MD

.....
Jane Doe v. Orthopedic Spine Surgeon/Neuromonitoring Group

Type of Case: Medical Malpractice
Settlement: \$6M

Plaintiff's Counsel: Steve Crandall, Crandall & Pera Law, (216) 538-1981

Defendants' Counsel: Anonymous

Court: Hamilton County

Date Of Settlement: August 1, 2024

Insurance Company: Med Pro

Damages: Partial paralysis, loss of bowel and bladder control

Summary: Surgeon implanted a cage too far into plaintiff's lumbar canal, causing pressure against the nerves in her dura. Neuromonitoring illustrated a change in signal but this was not properly discussed with the surgeon. Post-operatively

she awoke with new and severe symptoms and a CT scan illustrated the cage's negligent placement. Surgeon still did nothing and plaintiff was left in her condition permanently.

Plaintiff's Experts: Dr. David Xu (Neurosurgeon); and Dr. Christopher Geiger (Neurologist)

Defendants' Expert: Dr. Kevin McGrail (Neurosurgeon)

John Doe v. ABC Car Part Supplier

Type of Case: Motor Vehicle Collision

Settlement: \$520,000

Plaintiff's Counsel: Joshua D. Payne, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Avenue, E., Suite 1200, Cleveland, Ohio 44114, (216) 694-5232

Defendant's Counsel: *

Court: *

Date Of Settlement: August 2024

Insurance Company: *

Damages: Head trauma and orthopedic injuries

Summary: Motorcyclist proceeding straight through intersection at high speed under the influence of narcotics when defendant commercial van turned left in front of him causing collision.

Plaintiff's Expert: Eric Brown of Crash Tech

Defendant's Expert: **

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

Type of Case: Medical Malpractice - Birth Trauma / Neonatal Malpractice

Settlement: \$3 Million

Plaintiff's Counsel: Jonathan Mester, Esq./William S. Jacobson, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Avenue, E., Suite 1200, Cleveland, Ohio 44114, (216) 694-5225

Defendants' Counsel: Withheld

Court: Hamilton County

Date Of Settlement: August 2024

Insurance Company: *

Damages: Mild Cerebral Palsy

Summary: Baby was full term with an uneventful prenatal course. Labor was normal up through the second stage of labor. Fetal monitor showed decelerations through most of the second stage, yet labor continued for 6 hours and baby was ultimately born with instrument delivery. Baby's records showed low glucose and potential hypoglycemic brain injury and HIE. Claims against both OBGYN team and neonatal team.

Plaintiff's Experts: Joseph Ouzounian, M.D. (Maternal

Fetal); Corinne Leach, M.D. (Neonatology); Stephen Nelson, M.D. (Peds Neuro); Gordon Sze, M.D. (Peds Neuroradiology); Cynthia Wilhelm, Ph.D. (Life Care Planning); and David Boyd, Ph.D. (Economist)

Defendants' Experts: There were roughly 15 defense experts among multiple defendants.

John Doe v. Private Yacht Club, Inc.

Type of Case: Fall down stairs

Settlement: \$710,000

Plaintiff's Counsel: David R. Grant and Frank L. Gallucci III, Plevin & Gallucci Co., L.P.A., (216) 861-0804

Defendant's Counsel: Withheld

Court: Lake County Common Pleas

Date Of Settlement: July 2024

Insurance Company: Withheld

Damages: Displaced ankle fracture, fibula fracture requiring surgical repair with hardware

Summary: 78-year old guest at private club slipped and fell on exterior, painted concrete stairs near outdoor pool.

Plaintiff's Experts: Kevin Rider, Ph.D., P.E., CPE (Human Factors Engineer); Richard Zimmerman, RA (Architect); Robert Wetzel, M.D. (Ortho); and Pamela Hanigosky, RN, BSN, CRRN, CLCP (Certified Life Care Planner)

Defendant's Experts: Richard Kraly (Architect); and Stephen Capizzi, M.D., FCCP, CLCP

Jane Doe v. John Doe

Type of Case: Motor Vehicle Accident

Settlement: \$1,250,000.00

Plaintiff's Counsel: Dana M. Paris, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Avenue, E., Suite 1200, Cleveland, Ohio 44114, (216) 694-5201

Defendant's Counsel: *

Court: Cuyahoga County

Date Of Settlement: June 2024

Insurance Company: State Farm Mutual Insurance Company

Damages: *

Summary: The Plaintiff was violently struck as a pedestrian in a parking lot and, as a result, suffered a TBI with neurocognitive deficits, subarachnoid hemorrhage requiring emergent craniotomy, and permanent scarring.

Plaintiff's Experts: Priti Nair, M.D. (Physical Medicine & Rehabilitation, Life Care Planner); Ryan Mekota, Psy.D. (Neuropsychologist); Bruce Growick, Ph.D (Vocational); and David Boyd, Ph.D. (Forensic Economist)

Defendant's Expert: None

.....
Jane Doe, a Minor v. John Doe

Type of Case: Dog Bite

Settlement: \$500,000.00

Plaintiff's Counsel: Dana M. Paris, Esq., Nurenberg, Paris, Heller & McCarthy Co., LPA, 600 Superior Avenue, E., Suite 1200, Cleveland, Ohio 44114, (216) 694-5201

Defendant's Counsel: N/A

Court: N/A

Date Of Settlement: June 2024

Insurance Company: USAA

Damages: *

Summary: The Plaintiff, a 2-year-old child, was severely attacked by a dog while attending a family picnic. She sustained multiple, extensive facial lacerations, requiring emergency surgery. The dog owner held an insurance policy with USAA, which provided coverage limits of \$500,000.00. Economic damages amounted to approximately \$54,000.00, and we argued that the statutory caps on non-economic damages did not apply due to the Plaintiff's permanent and substantial physical disfigurement. A pre-suit demand was issued, resulting in the full policy limits being tendered within two weeks. The case resolved promptly, concluding within 10 months of the incident.

Plaintiff's Expert: Joyesh Raj, M.D. (Plastic Surgeon)

Defendant's Expert: None

.....

John Doe v. Hospital, Doctors

Type of Case: Medical Negligence

Settlement: \$10,500,000.00

Plaintiff's Counsel: Henry W. Chamberlain, Chamberlain Law Firm, Co., LPA, (440) 695-0150

Defendant's Counsel: Confidential/Withheld

Court: Confidential/Withheld

Date Of Settlement: June 2024

Insurance Company: N/A

Damages: Traumatic Brain Injury

Summary: Nine-day old infant suffered brain trauma during otolaryngology surgery to repair congenital birth defect.

Plaintiff's Experts: Withheld. Experts were retained in the areas of pediatric otolaryngology, pediatric neurology, pediatric neuropsychology and pediatric neuroradiology, life care planning, vocational expert and economist.

Defendants' Experts: Withheld. Defendants retained experts in the areas of pediatric otolaryngology, pediatric neurology, neurosurgery, genetics, endocrinology, pediatric anesthesia, life care planning, and economist.

.....

John Doe v. ABC Hospital

Type of Case: Medical Malpractice - Missed Brain Cancer Diagnosis

Settlement: \$6,250,000.00

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

Defendant's Counsel: Withheld

Court: N/A

Date Of Settlement: March 29, 2024

Insurance Company: N/A

Damages: *

Summary: Alleged missed diagnosis of brain cancer originating on the optic nerve of a 17-year old patient leading to complete blindness, and catastrophic speech and motor dysfunction. The patient initially presented to ABC hospital with complaints of headaches and blurred vision, and after testing to rule out a germinoma (brain cancer) was told that they had an atypical presentation of multiple sclerosis ("MS"). After extensive treatments for MS over the next two years, the patient continued to decline. MRI then revealed a lesion on the patient's left optic nerve, but no biopsy was performed or recommended. The patient then sought a second opinion at XYZ hospital, where biopsy of the optic nerve revealed a germinoma. While subsequent radiation cured the patient's cancer, they were left completely disabled with a need for 24/7 care to cover even their most basic of needs. The defense argued that this cancer was extremely rare and could not have been suspected, as well as that a genetic abnormality was responsible for the injuries.

Plaintiff's Experts: Withheld

Defendant's Experts: Withheld

.....

Est. Of Jane Doe v. Anonymous Nursing Home

Type of Case: Nursing Home Medical Negligence

Settlement: \$600,000

Plaintiff's Counsel: Michael D. Shroge, Esq., Plevin & Gallucci Co., L.P.A., (216) 861-0804

Defendant's Counsel: Randy Engwert / Reminger

Court: Lucas County Common Pleas Court

Date Of Settlement: March 22, 2024

Insurance Company: *

Damages: Death

Summary: Alleged failure to monitor and treat tracheotomy. Plaintiff died 13 hours after admission to nursing home.

Plaintiff's Experts: Christa K. Hoiland, M.D.; and Marlene Blackford, MSN. Rn

Defendant's Experts: None identified prior to settlement

.....

Estate of John Doe v. Private Business

Type of Case: Slip and Fall / Wrongful Death
Settlement: \$12,500,000
Plaintiff's Counsel: David R. Grant and Frank L. Gallucci III, Plevin & Gallucci Co., L.P.A., (216) 861-0804
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas Court
Date Of Settlement: March 2024
Insurance Company: Withheld
Damages: Death

Summary: Slip and fall as a result of a negligently designed and maintained walkway.

Plaintiff's Experts: Kevin Rider (Human Factors, Introtech); Name Withheld (Engineer); Rick Zimmerman; Larry Halgren; Burke Rosen (Economist); Zeleznik & Associates (Business Evaluation); and Name Withheld (Certified Industry Professional)
Defendant's Experts: Dennis Medica, CPA; Larry Morrison, CPA; Larry Garvin (Contracts Professor); David Krauss (Human Factors); Name Withheld (Engineer); and Name Withheld (Certified Industry Professional)

The Estate of Baby Doe v. ABC Physician Group (Pre-Suit Resolution)

Type of Case: Wrongful Death - Fetal Demise
Settlement: \$2,000,000.00
Plaintiff's Counsel: David W. Skall and Julie Oliver-Zhang, The Becker Law Firm and Oliver-Zhang Law, (216) 621-3000
Defendant's Counsel: Withheld
Court: N/A
Date Of Settlement: February 7, 2024
Insurance Company: N/A
Damages: *

Summary: Alleged malpractice of an obstetrician, her Southern Ohio physician group, and hospital obstetrical nurses leading to wrongful death of an otherwise healthy term baby in November 2022. Claims more specifically involved negligent failures in monitoring fetal heart rate, limiting the use of Pitocin, delaying c-section when it became clear that vaginal delivery was no longer safe and, finally, improper/failed use of both forceps and a vacuum extractor that caused massive/critical cerebral hemorrhaging just prior to delivery. The providers ultimately performed an emergency c-section, but it was too late. The newborn was by then in full arrest and could not be resuscitated. It is believed that this payment is the largest in Ohio history in any matter involving pre-suit settlement for wrongful death of a term newborn.

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

Estate of Ward v. City of Ashtabula

Type of Case: Civil Rights / Police Excessive Force
Settlement: \$260,000.00
Plaintiff's Counsel: Matt Besser and Cathleen Bolek, Bolek Besser Glesius LLC, (216) 464-3004
Defendant's Counsel: John McLandrich (City of Ashtabula) and Michael S. Loughry (Officer Gillespie)
Court: N.D. Case No. 23-cv-738, Judge Patricia Gaughan
Date Of Settlement: February 2024
Insurance Company: Travelers
Damages: *

Summary: A police sniper shot and killed David Ward, 23, single, unemployed, intoxicated, depressed and suicidal, from 482 feet away during a standoff on the 1000 foot Spring Street Bridge. Ward had an unloaded shotgun that he was not pointing at anyone when the sniper killed him. Even if he had, and even if the gun was loaded, Ward was too far away to be an imminent threat to anyone.

Plaintiff's Experts: N/A
Defendant's Expert: N/A

E/O Basta v. Univ. of Cincinnati Physicians, Inc., et al.

Type of Case: Medical Negligence / Wrongful Death
Settlement: \$5,000,000.00
Plaintiff's Counsel: Todd Gurney and Brian Eisen, The Eisen Law Firm, (216) 687-0900
Defendants' Counsel: *
Court: Hamilton County
Date Of Settlement: February 2024
Insurance Company: *
Damages: *

Summary: 44-year old man underwent burn surgery. Unfortunately, the Anesthesiologist and CRNA failed to take necessary precautions in light of the patient's obesity and obstructive sleep apnea, and failed to timely recognize and reverse post-operative respiratory distress, which resulted in respiratory arrest and death.

Plaintiff's Experts: William Mazzei, MD (Anesthesia); Edward Bittner, MD (Anesthesia & Critical Care); and Kristen Hull, CRNA (Anesthesia)
Defendants' Expert: **

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

Type of Case: Medical Malpractice / Wrongful Death -

Missed Aortic Dissection

Settlement: \$975,000.00

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

Defendants' Counsel: Withheld

Court: N/A

Date Of Settlement: January 31, 2024

Insurance Company: N/A

Damages: *

Summary: Alleged missed diagnosis of an aortic dissection leading to the death of a 64-year old patient. The patient presented to the ABC hospital emergency room after a syncopal episode and complaining of severe pain in her chest that then migrated to the middle of her back, which was unrelieved by multiple rounds of narcotics. The emergency room physician and on-call cardiologist both agreed that the patient was likely suffering from an NSTEMI, and planned to take the patient to the cath lab the following morning. Approximately three hours later, the patient's dissection ruptured, and she passed away. The defense argued that the patient presented with classical signs and symptoms of an NSTEMI, and did not have signs and symptoms consistent with aortic dissection.

Plaintiff's Experts: Withheld

Defendants' Experts: Withheld

.....
John Doe v. Alpha, MD, Inc.

Type of Case: Medical Malpractice Wrongful Death

Settlement: \$1,400,000.00

Plaintiff's Counsel: George E. Loucas, John Burnett, Loucas Law, LPA, (216) 834-0400

Defendant's Counsel: Confidential

Court: Confidential

Date Of Settlement: Fall 2023

Insurance Company: Self-Insured

Damages: 36-year old man; unemployed; surviving parents and adult sister

Summary: Alleged over prescribing of prescription painkillers, resulting in opiate use disorder and death from overdose.

Plaintiff's Expert: Daniel Derman, M.D. (Internal Medicine)

Defendant's Experts: Gregory Famiglio, M.D. (Addiction Medicine); and Scott Palmer, M.D. (Internal Medicine)

.....
Jeno Havasi, as Guardian of Gina Havasi, et al. v.

Kimberly Kraus, et al.

Type of Case: Medical Malpractice / Wrongful Death

Settlement: \$1,000,000

Plaintiffs' Counsel: Charles Kampinski and Kristin Roberts

Defendants' Counsel: William Meadows, Brian Gannon

Court: Cuyahoga County Common Pleas Case No. CV-20-934601, Judge Jennifer O'Donnell

Date Of Settlement: December 6, 2023

Insurance Company: The Doctors Company

Damages: Wrongful Death

Summary: Four days after giving birth, a 39-year old woman was not feeling well and called her Ob/Gyn. She spoke with her physician about her symptoms, and was diagnosed over the phone with a urinary tract infection. She was prescribed an antibiotic, and she was instructed that if her symptoms worsened, she was to call back. Six hours later, her symptoms had drastically worsened, and she again phoned her physician. A record of the call showed that it lasted for approximately six minutes. No one at the doctor's office admits to remembering her phone call. The patient's mother testified that the doctor advised her to take her next dose of antibiotic and wait for the medicine to take effect. She was not instructed to come into the doctor's office or go to the ER for treatment. The symptoms were actually caused by postpartum preeclampsia, which could have been treated if properly diagnosed. Approximately five hours following the second phone call the patient suffered a massive stroke that led to a her being in a coma for three years. She passed away leaving behind her parents as well as her two young children.

Plaintiffs' Experts: Shana Yeager, MD; Aaron Filler, MD; and John F. Burke, Ph.D.

Defendants' Experts: Dwight Rouse, MD; Geoffrey Colby, MD; Mark Delano, MD; Wayne Trout, MD; and William Meurer, MD

.....
John Doe, et al. v. Alpha, MD, Inc., et al.

Type of Case: Medical Malpractice

Settlement: \$3,000,000.00

Plaintiffs' Counsel: George E. Loucas, Loucas Law, LPA (216) 834-0400

Defendants' Counsel: Confidential

Court: Confidential

Date Of Settlement: Fall 2021

Insurance Company: SCHS Insurance Company, Ltd.

Damages: 43-year old woman; homemaker; husband and three (3) children; one of which had developmental disabilities

Summary: Failure to timely diagnose and appropriately manage Plaintiff's medication therapy, which proximately caused Plaintiff to suffer continuous seizures (aka status epilepticus) which resulted in her suffering a severe, permanent

and irreversible debilitating acquired brain injury.

Plaintiffs' Experts: Jeffrey Galvin, M.D. (Internal Medicine); Gregory Collins, M.D. (Addiction Medicine); Kathryn Davis, M.D., MS, FAES (Neurology); Jody Pickle, M.D. (Neuropsychology); David Boyd, M.D. (Neuroradiologist); Steven R. Zeller, M.D., Ph.D. (Neuroradiology); Ann Koerner, RN, BSN, CRRN (Nurse Consultant/Cost of Care Analyst); and John Burke, Ph.D. (Economist)

Defendants' Experts: Bruce Morgenstern, M.D. (Neurology); Daniel Gzesh, M.D. (Neurology); Robert Palmer, Ph.D. (Toxicology); Pam Hanigosky (Life Care Planner); and James Fellin, CPA (Accountant)

.....
Jane Doe v. Alpha, MD, Inc., et al.

Type of Case: Medical Malpractice Wrongful Death and Survivorship

Settlement: \$6,000,000.00

Plaintiff's Counsel: George E. Loucas, Geoffrey Eicher, Loucas Law, LPA, (216) 834-0400

Defendants' Counsel: Confidential

Court: Confidential

Date Of Settlement: Winter 2020

Insurance Company: Self Insured

Damages: 47-year old woman; homemaker; husband and seven (7) children

Summary: Alleged over prescribing of prescription painkillers, resulting in opiate use disorder and death from overdose.

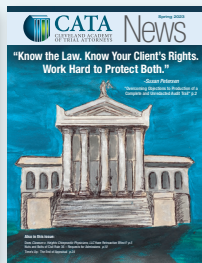
Plaintiff's Experts: Gregory Collins, M.D. (Addictionologist); Edgar Ross, M.D. (Pain Management); Jeffrey Galvin, M.D. (Internal Medicine); Steven Zeiler, M.D. (Neurology); David Markenson, M.D. (Hospital Administration); and Dr. John Burke (Economist)

Defendants' Experts: John Boltri, M.D. (Family Medicine); Todd Antin, M.D. (Psychiatry); Kevin Horn, M.D. (Forensic Pathology); Robert Powers, Ph.D. (Forensic Toxicology); Herman Williams, M.D. (Hospital Administration); and Gourang P. Patel, Pharm.D. (Pharmacy)

Past Issues Of The CATA News Are Available On The Public Portion Of The CATA Website.

To view past issues, please go to:

<http://clevelandtrialattorneys.org/past-newsletters-issues>



Application for Membership

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

1. Skill, interest and ability in trial and appellate practice.
2. Service rendered or a willingness to serve in promoting the best interests of the legal profession and the standards and techniques of trial practice.
3. Excellent character and integrity of the highest order.

Name: _____ Email: _____

Firm: _____

Office Address: _____ Phone: _____

Home Address: _____ Phone: _____

Law School / Year Graduated: _____

Professional Honors or Articles Written: _____

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

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

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

Applicant Signature: _____ Date: _____

Invited By: (print) _____ (sign) _____

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

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

Please return completed Application with membership dues to:

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

CATA Membership Dues

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

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

[FOR INTERNAL USE]

President's Approval: _____ Date: _____

Fees Welcome List Serve Mailing List

CATA's 17th Anniversary "SKI" L.E.

Litigation at Sunrise

January 22 – 24, 2025

We would like to extend an invitation to those who wish to join us in person or via Zoom for CATA's 17th Anniversary "SKI" L.E. event. We will be covering a range of topics that highlight the latest techniques in litigation and trial practice, presented by our esteemed colleagues.

Registration is required.

Please contact Dana Paris
(216) 694-5201 or danaparis@nphm.com
or visit the CATA website at clevelandtrialattorneys.org

Wednesday
January
22

Tobacco II: Where's The Money?
Presented by Hon. David Matia

Overcoming Damage Caps
Presented by Jordan Lebovitz, Esq.



Thursday
January
23

Mindfulness, Peace And Spirituality Post CABG *Presented by* Chris Patno, Esq.

10 Tips For Trial Lawyers I Learned From A Graphic Designer (aka my wife):
Plus, Updates For 2025 Getting Sepsis Alerts/Reports & More From EMR Systems
Presented by Dustin Herman, Esq.

Friday
January
24

The Intersection of Technology & The Law: Mining For Gold On-Line
The Effective Use of AI, The Pitfalls and Perils to Avoid
Presented by Stephen Keefe, Esq.

Ohio Supreme Court Case Law Update On Tort Law
Presented by Paul Flowers, Esq. & Louis Grube, Esq.



PENDING APPROVAL FOR 6 CLE
\$200.00 for all presentations | \$35.00 for individual presentations



Winter 2024-2025

Structured Settlements & Settlement Planning

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



Settlements



Analysis



Structured Settlements



Structured Attorney Fees



Market Based Structured
Settlement Solutions



Settlement Financial Planning

Call 216.810.5900

cwsettlements.com

info@cwsettlements.com

CW SETTLEMENTS
STRUCTURED SETTLEMENTS & SETTLEMENT PLANNING