CATA
CLEVELAND ACADEMY OF TRIAL ATTORNEYS
Winter 2025-2026
News

President's ~~Message~~ RAP

by Dustin Herman p.2

"SO YOU WANNA KNOW WHAT IT MEANS TO BE A TRIAL LAWYER;
WELL HERE'S A YOUNG LAWYER ANTHEM I WROTE FOR YA...
WE WAKE UP IN THE MORNING WITH CLIENTS ON OUR MIND;
STILL UP AT 2 AM JUST PUTTING IN THE TIME...
THE AGENDA OF THE CLIENT IS THE ONLY THING THAT MATTERS;
YOU'RE LOST IF YOU THINK THIS IS ABOUT MAKING YOUR WALLET FATTER...
PATIENT AND KIND, COMPASSIONATE, CARING; THESE ARE THE WORDS
WE HOPE OUR CLIENTS ARE SHARING..."

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Cover layout by Joanna Eustache

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President's Message

by Dustin B. Herman

I am so proud to be serving as the President of CATA. CATA is one of the best local trial attorney organizations in the country!! Our members are what make us great. In the last 4 years, CATA members have obtained about two-thirds of all million-dollar plus verdicts in the state of Ohio. That is absolutely incredible. This publication alone–that Kathleen St. John has put together for so many years–is one of the best in the country, even compared to publications put out by AAJ and state justice associations.

And this year we started the first annual CATA Fellows Program. It was an amazing event. We brought in law students from Case Western, Cleveland State, and Akron. 15 CATA attorneys dedicated their whole day to teaching these kids. We had lectures and panel discussions in the morning and brought in mock jurors in the afternoon. Fellows got on their feet and performed an opening statement or closing argument from a mock fact pattern and got feedback from veteran trial attorneys.

CATA's goal in putting on the CATA Fellows Program is to: (1) TRAIN the next generation of trial attorneys; (2) EXPOSE these law students to what it is that we do as plaintiff attorneys–as civil prosecutors; and (3) INSPIRE the next generation of trial attorneys to represent people, not corporations. This first event was a huge success and we are going to be expanding it to law schools throughout Ohio.

Finally, many of you reading this will remember the "rap" I did during my speech after getting sworn in as President. This was something I wrote about 10 years ago. It was for a contest for who could write the best song about "what it means to be a trial lawyer." I decided to write a rap. And every word in that rap still holds true today. I included the lyrics on the next page. I end the rap with the old phrase "If you love what you do, you never work a day in your life." I truly feel that way about being a trial lawyer!! ■

THE TRIAL LAWYER'S CREED

"So you wanna know what it means to be a trial lawyer; well here's a young lawyer anthem I wrote for ya

We wake up in the morning with clients on our mind; still up at 2 AM just putting in the time

Depositions and hearings, mediations and trials; we can't even count all the frequent flyer miles

We research, we write, we're relentless in our cause; to do good for our clients and ring justice down the halls

Adjusters can be obnoxious, defense attorneys sometimes vile; we brush it off shoulders and just greet em with a smile.

There's bickering and fighting so much useless chatter; we just rise above it–they better get themselves a ladder

The agenda of the *client* is the only thing that matters; you're lost if you think this is about making your wallet fatter

Patient and kind, compassionate, caring; these are the words we hope our clients are sharing

We strive to do our best and we learn every day; we're so thankful for all the mentors we have right here in CATA every day.

There's Grant and Gallucci, Petersen and Paris; there's DiCello and Connolly and Hirshman and Harris

Too many others to mention in this room in a two-minute rhyme; but you know who you are, we're so grateful for your time

Because you are the leaders who inspire and teach us, that there's more to being a trial lawyer than our courtroom egos

It's about heart and soul and love of the practice; and fighting for what's right no matter the challenge

Big business, Big Pharma, Big insurance, Big tobacco–they put profits over people and act like it doesn't matter

They duck and they dive and they bob and they weave, and they cry out for tort reform and seek corporate amnesty

So we the trial lawyers step in and we change their behavior; one case at a time we make the world safer

And we fight legislation written by industry and the Chamber; if we're not in Columbus with the OAJ–fighting the fight–we're only doing half of what we're able

The trial lawyers' creed is to practice with passion, to be relentless, be determined, and to bleed enthusiasm

Our fanatical pursuit of justice need not be justified, because if you love what you do, you never work a day in your life"

by Dustin B. Herman

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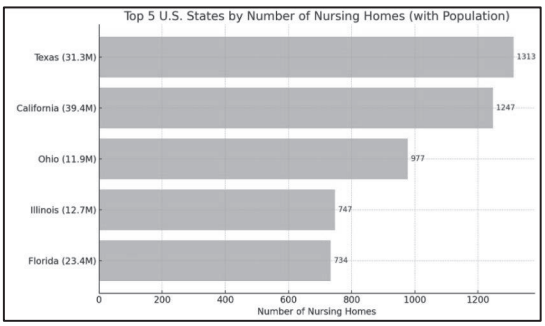
Nursing Home Cases Are Often Corporate Malfeasance Cases: 10 Tips For Litigation

by Dustin B. Herman

Nursing homes are notorious for being understaffed. This is not an accident. This is the result of corporate decisions that focus on maximizing profits at the expense of patient safety. This article is a guide on how to prove it in discovery and at trial. Here are 10 tips to follow in your cases:

1. Nursing Home Understaffing is a Huge Problem in Ohio

Ohio has the third most nursing homes in the country. Despite having half the population size of Florida, Ohio has 230 more nursing homes than Florida. Why? Well, Ohio has one of the lowest regulations for minimum staffing levels in the country. Ohio Administrative Code 3701-17-08(C) sets a minimum of 2.5 hours per patient per day (HPPD) of nursing staff care, whereas the minimum is much higher in other states—e.g., Florida (3.6), California (3.5), Illinois (3.8). Worse than that, the Ohio minimum does not specify how many of those 2.5 hours have to be from an actual licensed nurse as opposed to a nursing aid. You will find that nursing homes claim they met the standard of care on staffing levels simply by complying with this minimum of 2.5 HPPD. But that is nonsense and you need to explain that to the judge and jury. Obviously, some patients need more care than others. If a nursing home has a lot of sick patients or a lot of patients there for short-term rehabilitation, then that nursing home might need 4 or 5 HPPD of nursing staff care to properly take care of the residents.



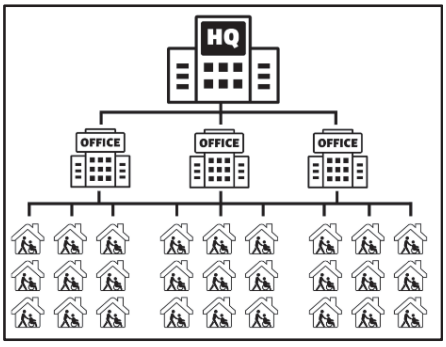
Make sure you cite to the rest of OAC 3701-17-08(C), which states: "Each nursing home shall have **sufficient direct care staff** on each shift to meet the **needs of the residents** in an appropriate and timely manner". That is the standard of care, not a bare minimum of 2.5 HPPD. Also ask the Director of Nursing or the Corp. Rep the following question: "A simple head count of the number of residents at a nursing home is not enough information to determine whether the nursing home has enough staff to meet the needs of those residents, right?" They will agree. Just like the bolded text above, minimum staffing levels depend entirely on patient need. A nursing home just can't ever go below 2.5 HPPD.

2. Nursing Home Corporate Structures are Designed to Avoid Liability.

Nursing home corporations try to insulate themselves from liability by having layers of corporations between the nursing home and the parent corporation. Often there will be the parent corporation, regional offices, and the individual nursing homes—all of which are incorporated

separately. Nursing homes like to pretend that the individual nursing homes run themselves and that the parent company cannot be held liable for negligence of the nursing home staff.

But as we all know—liability flows from control. The key question is: **Who controls the operations of the nursing home?** Well, what we have learned over the years is that the budgeting for staffing levels comes from the parent corporation and the individual nursing homes just have to make due with what they are given. Depose the Executive Director, the Director of Nursing, and the Corp. Rep. and ask them who controls the budgeting for the staffing levels.



3. How Nursing Homes Work: Care Provided vs. Care Promised.

Nursing homes are not paid like the rest of the medical industry. If we go to a doctor or a hospital, we get a bill for the care actually provided, and then we (or our insurance company) will pay the bill. Nursing homes are totally different. Nursing homes receive most of their revenue through Medicare and Medicaid. Nursing homes tell Medicare and Medicaid how much care they will be providing to each resident over the next three months—and then the **nursing homes get paid in advance** for the care they have promised to provide. If the nursing home cuts corners on staffing, they increase profits. This incentive structure is often what leads to understaffing.

4. How Much do Nursing Homes Get Paid? —the Case-Mix Index.

The way the federal government calculates how much nursing homes will get paid is complicated and is changing all the time. It used to be the "RUG" score (Resource Utilization Group), but now Medicare uses the PDPM system (Patient-Driven Payment Model). You can learn the details about those systems through your experts or AI, but the overall concept is the same: **there is a baseline amount of money that a nursing home will get paid per patient per day** (let's call it $100), and that **baseline amount gets a multiplier** based upon the average acuity of the patients in the home (the multiplier is the case-mix index).

To calculate the case-mix index, each patient is assigned a number based on their acuity level (might be as low as 0.45 or as high as 2.67 or 4, depending on the model being used). Those numbers get added up and divided by the total number of patients, and the resulting number is the case-mix index. So if the baseline amount is $100 and the CMI is 2.7, that is **$270 per patient per day—which is in fact about the average in Ohio.** Thus, if a nursing home has 100 residents, then that is $27,000 per day or $9,855,000 per year. There is an entire industry of professionals who market themselves as being able to "increase the case-mix index without increasing expenses." Just Google those terms and look for how people describe their jobs on LinkedIn profiles.

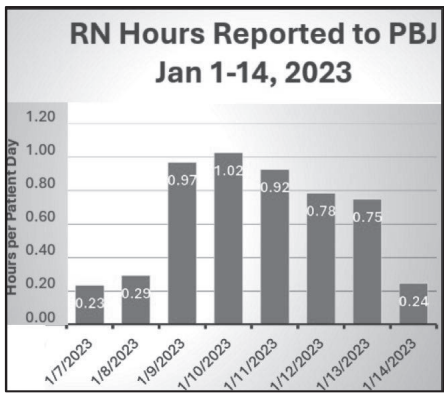
5. Getting the Staffing Data.

Nursing homes employ RN's, LPN's, and STNA's, and they are required to report to CMS (Center for Medicare & Medicaid Services) the amount of hours RN's, LPN's, and STNA's worked each day. The easiest way to obtain this data is to hire an expert. We use Ernie Tosh out of Texas. He is fantastic. He is a nursing home lawyer who has developed an expertise in obtaining nursing home staffing data. You also want to request this information in discovery (Payroll-Based Journal, staffing reports, assignment sheets, timecards/punch detail reports, census reports, the Annual Report, etc.), but it will be a slog.

When evaluating cases at the outset you can get a good idea of the staffing levels of the facility by looking at the Medicare 5-star rating for the home. There is a specific star rating for staffing levels. If the home only has one or two stars for staffing, that is a pretty good indication of chronic understaffing.

6. Connect the Understaffing to the Injury.

It is not enough to simply get the staffing data. You must show the judge that the understaffing is relevant to your case. This is a pure 401 issue. You do not need to prove "negligent staffing" (although in many cases you may be able to prove that). The question for relevancy under Evid. R. 401 is simple: Does the staffing evidence tend to make a fact of consequence more or less probable?



In a recent case Nick DiCello and I tried (see CATA News Verdict Spotlight, this issue), our client had a change in condition on a Saturday morning and our expert opined that she needed to be

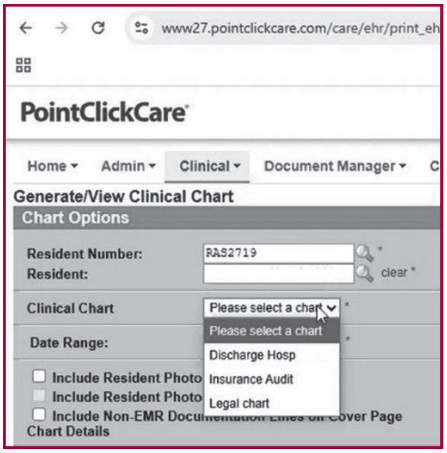
assessed by an RN that morning but was not. Under the Ohio Administrative Code, "assessments" are not within the scope of practice of an LPN. Only an RN can do an "assessment" of a patient.

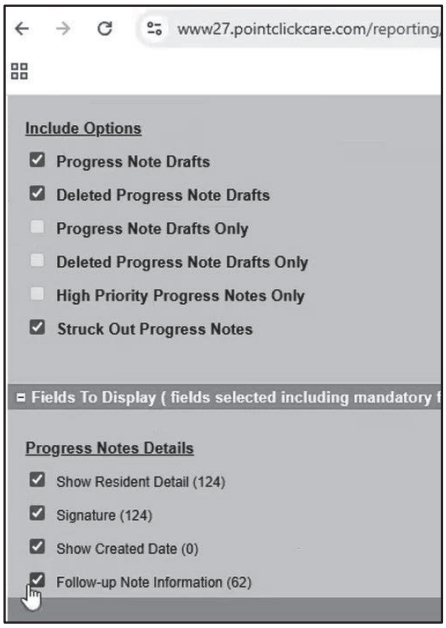
At trial, the defendant nurse practitioner actually admitted that nursing homes save money by hiring LPN's instead of RN's—even though that is not legal: *"Because when I worked in nursing homes,* ***99 percent of the people that work there are LPNs.*** *And I know by the state law there's all these rules, they're not technically supposed to make assessments and all this stuff, but* ***we don't always have RNs*** *in all the buildings I ever go to. So I rely on LPNs who have experience, who have good judgment, and we have a relationship, a rapport.* ***And I know that doesn't fall into the state, you know, statutes, laws, whatever you want to call it, but that's who works in nursing homes."***

Whether our client was in fact assessed by an RN—and if not why not—were facts of consequence in our case. The staffing data (see the graph) showed that there were way less RN's working on the weekend as opposed to the weekdays—tending to make it less likely that our client was in fact assessed by an RN. That made the staffing evidence relevant. In another case, it might be that your client needed a two-person assist, but was only getting assisted by one person when they fell. That makes the level of staffing relevant. It might be that nobody came to help your client when they were ringing the call light for an hour and fell when they tried to get up to use the bathroom. That makes the level of staffing relevant to the injury.

7. Virtual Inspection of Point Click Care.

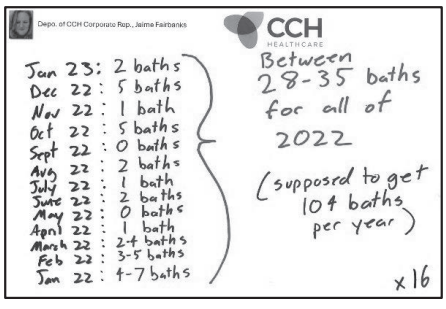
Almost every nursing home uses Point Click Care as its EMR. You must do a virtual inspection (via Zoom) of PCC. I can promise you the paper/PDF "medical records" you receive in discovery are not complete. In fact, you need to educate your judge that the paper/PDF "medical records" are actually just "reports" run from PCC. When running these "reports," there are a ton of filters that the person can use which will add more or less information to those reports. There is not enough time in this article to explain the details of a virtual inspection. Your best bet is to hire attorney Megan Shore from Chicago as a consultant, and she will do the virtual inspection for you and will teach you how to do it yourself next time. That is what I did, and I learned a ton from her. Above are two screenshots from the inspection she did in my case. The first shows a dropdown menu for template medical records reports with pre-set filters ("Discharge Hospital," "Insurance Audit," and "Legal Chart"). Each one of those template reports will give you a different set of records—and they are all incomplete. The next screenshot shows the filters via checkboxes for the Progress Notes report. The person running the report simply checks what should be included in the report. In her inspection, Megan will have the deponent run about two dozen different reports—with all the right checkboxes checked—to ensure you get all the information available in PCC.





8. Documentation Survey Report.

The DSR is one of the reports that you need to get, but you will almost never get it without specifically asking for it or doing an inspection. The DSR is the nursing aid documentation. It shows the records for the patient's bathing, food and fluid intake, bowel movements, transfers, and many other things. It also shows how many people assisted the patient in doing these things. In the case Nick and I tried in June 2025, we fought hard to get those records (it took an inspection and several motions to compel). I then spent 45 minutes in a corporate representative deposition going through the Documentation Survey Report and making Exhibit 16 that you see here. The corp. rep. confirmed the documentation showed our client only got between 28 and 35 baths all year when she was supposed to get at least 104. She also confirmed that Exhibit 16 was a fair and accurate summary of the medical records. At trial, we ended up getting this exhibit admitted into evidence (without objection) as a summary of voluminous records.



9. Follow-Up Question Report.

This is sort of like the audit trail for the Documentation Survey Report. It is another critical report. The DSR will show you what was done and when they say it was done, but the FUQR will tell you when the person entered the information into the chart. We had a client die from dehydration in the nursing home. We got the DSR and the FUQR. The FUQR showed that a ton of the fluid intake entries were entered three weeks after our client had died. It also showed that some of the fluid intake entries were entered in advance. That is, on certain days at around 9am, the nursing aid entered in the fluid intake for the entire day (breakfast, lunch, and dinner). Those are illegal entries. We even got a corporate rep. to admit they were illegal entries once we showed the corp. rep. the FUQR.

10. Nursing Home Resident Bill of Rights Claims.

Nursing home residents can sue for a violation of the Nursing Home Resident Bill of Rights. The rights are listed in R.C. 3721.13, and R.C. 3721.17(G)(1)(a) provides a statutory cause of action for a violation of those rights. Nick and I filed a Bill of Rights claim for the lack of bathing in the case referenced above. We proved at trial that our client only got 26 baths in all of 2022. The jury found this was a violation of our client's right to be treated with dignity. The jury returned a verdict of $1,225,000 for the Bill of Rights claim alone. We also had the jury write the number of "occurrences of violations" on the verdict form. The jury wrote there were "72" occurrences, which meant the verdict would not be subject to reduction based on the caps. You should familiarize yourself with the rights listed in R.C. 3721.13 and consider bringing a Nursing Home Resident Bill of Rights Claim when the facts support it.

* * *

Nursing home cases are not just about what happened at the bedside. They're about systemic corporate malfeasance—decisions made at the corporate level that inevitably harm vulnerable residents. With the right discovery, experts, and framing, you can expose those choices and hold the corporations accountable. ■

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Beating Summary Judgment On Caps – Two Case Studies

by Jordan D. Lebovitz, Brenda M. Johnson, and Joshua D. Payne

The "permanent and substantial physical deformity" exception to Ohio's statutory caps on noneconomic damages has been the subject of at least two articles published in previous issues of CATA News. One, published in the Winter 2021-2022 issue, was a survey of the case law addressing what can constitute a "permanent and substantial physical deformity."[1] The other was a brief set of pointers on how to build an evidentiary record before trial, along with procedural tips on how the issue should be presented in pretrial motion practice, as well as to the jury.[2]

This article, which is a third in that series, summarizes two recent trial court rulings (one state, one federal) in which we were able to defeat motions for summary judgment on this issue, and the approach we took to preparing and presenting each of these cases.

***Robert J. Cooper, Jr. v. General Truck Sales of Toledo LLC, et al.,* 2025 U.S. Dist. LEXIS 191195, 2025 WL 2771306 (N.D. Ohio Sept. 29, 2025)**

Robert Cooper was hit by a commercial truck on his way to work. When his airbag deployed, Robert sustained a left shoulder rotator cuff tear, along with damage to the upper tendon of his left bicep. Robert underwent surgery and implantation of permanent anchoring hardware, but the damage to his bicep tendon nonetheless caused his bicep muscle to drop, causing a visible physical condition known as a "Popeye deformity." Further surgical interventions left Robert with a six to seven centimeter surgical scar, along with a sunken atrophied region above his deformed bicep. He also sustained a loss of range of motion, and is no longer able to raise his arm above his shoulder.

To document Robert's condition, we took multiple high-quality photos of Robert's arm – two of which would later make their way into the district court's memorandum opinion and order denying the defendant's motion for summary judgment on the caps issue. We had Robert examined by an independent medical expert who documented Robert's ongoing pain and his resulting physical limitations, including his limited range of motion, in a detailed report using medical terminology as opposed to conclusions of law. And before his deposition, we took care to make sure that Robert was prepared to give candid and detailed answers to questions about his injuries and how they affect him in his daily life.

With this record, we were then able to mount a successful opposition to the defendant's inevitable motion for summary judgment. In addition to finding the photographs significant, the court also found the implantation of hardware and evidence of Robert's physical limitations to be material as well:

> Here, there is no dispute that Plaintiff's injury is not a 'single minor scar' but also an indentation in his bicep. And reasonable minds could disagree about the nature

> and severity of Plaintiff's injuries. Plaintiff submitted expert reports and photographs describing and depicting the injuries to his left bicep and shoulder. The photos show visible scarring and a prominent indentation in Plaintiff's arm.
>
> Plaintiff underwent multiple surgeries, each requiring the insertion of medical hardware into his arm. And while he does not experience pain at rest, [plaintiff's expert] opines that Plaintiff will continue to suffer when actively using his left arm and will likely never recover full range of motion without additional surgical intervention.[3]

On these facts, which we were able to present through a well-developed evidentiary record, the district court found a jury question as to whether Robert's injuries satisfy the "permanent and substantial deformity" exception to noneconomic damage caps, and denied defendant's motion for summary judgment.

Ronald Lee Wolff, et al. v. Schneider Nat. Carriers, Inc., et al., **Lucas County No. CI-202402761**

Ronald Wolff also was injured in a motor vehicle crash involving a commercial truck, which had cut him off while he was merging onto the freeway. His injuries required him to undergo an anterior cervical discectomy and fusion that left him with permanent surgical implants and a permanent surgical scar on his throat. He lost range of motion in his neck and upper back, and lost his sense of feeling in his fingertips as well.

Defendants filed for summary judgment, relying heavily on an attempt to minimize the significance of Ronald's surgical scar, which they equated to the kind of scar that can arise from normal roughhousing. In this case, however, like we had in the *Cooper* case, we obtained an independent medical expert to examine Ronald and provide a report documenting the extent of Ronald's physical limitations, loss of range of movement, and loss of feeling in his fingers. Ronald and his wife also testified at their depositions about the manner in which Ronald's injuries had limited his ability to perform household tasks and continue working in his trade as a tilesetter – limitations that our expert attested were permanent. In addition, we provided photographic evidence of Ronald's surgical scar, and Ronald (whose wife testified was not a complainer) testified candidly about how the scar made him feel.[4]

Relying on this record, we were able to mount a successful opposition to summary judgment in this case as well.[5] In denying defendants' motion, the trial court found that the evidence we presented regarding Ronald's surgical scar was sufficient to raise a jury question. The trial court also found that the evidence we presented of Ronald's loss of range of motion in his neck and other physical limitations, which we had been able to document both through our clients' testimony and through our expert's examination report, raised a jury question as well.

Conclusion

These two cases illustrate the effectiveness of what we believe are key elements in preparing your case to defeat summary judgment on these issues. One is obtaining high quality photos of your client's physical condition taken as near as possible to the date of your client's deposition or his examination by any expert. Where possible, obtain high-quality imaging of any surgical alterations or implantations of hardware as well. Get narrative expert reports that describe your client's condition in detail and in medical terms, not in terms of legal conclusions. And prepare your client for his or her deposition in a way that will help your client to speak candidly about their feelings, and not minimize or downplay them. Importantly, if there are range of motion or other mobility deficits, emphasize those and ensure that your client is well prepared to discuss those limitations in detail.

For now, *Arbino v. Johnson & Johnson*[6] is the law of the land in Ohio, though we disagree with its holding. We believe these arbitrarily set damage caps are unconstitutional. Though the Ohio Supreme Court held otherwise, they limit the ability for a jury, the fact-finder, to make the ultimate determination on damages in a civil case. Either way, Plaintiff trial attorneys are obligated to present any and all evidence, and the best possible evidence, to emphasize their clients' injuries and deformities under the current unconstitutional scheme to achieve the best fair outcomes for our clients. In the next article as a part of this series, we will explore the ways to best present this evidence at trial, after you've defeated the motion for summary judgment. ■

End Notes

1. Brenda M. Johnson, *A Survey of the Case Law Addressing "Permanent and Substantial Physical Deformity,"* CATA News, Winter 2021-2022.
2. Brenda M. Johnson and Dana Paris, *How to Get "Permanent and Substantial Physical Deformity" Issues to a Jury– And Win*, CATA News, Winter 2022-2023.
3. *Robert J. Cooper, Jr. v. General Truck Sales of Toledo LLC, et al.*, 2025 U.S. Dist. LEXIS 191195, *8-*9, 2025 WL 2771306 (N.D. Ohio Sept. 29, 2025) (record citations omitted).
4. When defense counsel asked Ronald if he was self-conscious about the scar, Ron responded that it "[l]ooks horrible, Looks like somebody cut my throat."
5. *See* Opinion and Judgment Entry filed August 21, 2025, *Ronald Lee Wolff, et al. v. Schneider Nat. Carriers, Inc., et al.*, Lucas County No. CI-202402761.
6. 116 Ohio St.3d 468 (2007).

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Ohio Supreme Court Holds R.C. 2323.451 Means What It Says: *Lewis v. MedCentral HealthSys.*

by Louis E. Grube, Michael J. Factor, and Calder C. Mellino

The emergency room is rarely a pleasant place to be. You're hurt. The chairs are uncomfortable. There's so much paperwork to fill out. And it's too late in the day (or perhaps too early) to be dealing with such an unrelenting assault on the senses. The baby sitting in the row behind you is the only one brave enough to cry out loud.

When a person is dealing with a medical emergency, a professional negligence lawsuit is likely toward the bottom of the list of things on their mind. The focus is, as it should be, on getting treatment and feeling better. A patient should not need to worry about keeping a record of every person they interact with—the person's name, employer, title, and the treatment they administered—so they can be named in a potential professional negligence suit.

But what happens when you're the victim of professional negligence and you don't know the name of the employees who injured you? This can be troubling. Ohio enforces a one-year statute of limitations for medical claims, which provides precious little time to investigate the injury, identify defendants, and file suit.

The Case:

A recent case in the Ohio Supreme Court, *Lewis v. MedCentral Health Sys.*, 2025-Ohio-4802, addressed this exact situation. The plaintiff, Christine Lewis, was admitted to the emergency department operated by OhioHealth's Mansfield Hospital. She was treated by several medical professionals. They medicated her and left her alone in a hospital bed without supervision. In a sedated haze, she fell from her bed onto the floor and fractured her neck. This, unsurprisingly, caused her excruciating pain and required surgery. Christine's recovery was long and hard fought.

Eight months after she was injured, Christine filed suit against Mansfield Hospital and ten "John Doe" defendants, listed as a monolithic group, "physicians, nurses, hospitals, corporations, health care professionals, or other entities that provided negligent medical or health care individually or through their employees and/or agents." She alleged that she received negligent medical care when she was left medicated and unattended. Six more months went by, and Christine amended her complaint to name the actual individuals involved in her injurious fall. She never requested summons for the "name unknown" defendants, nor did she serve them, and she left them entirely out of the amended complaint. By this point, the defendants were ready to argue that the statute of limitations for her claims had run. Two of the newly named defendants filed a motion to dismiss for failure to state a claim, arguing that the action against them was barred by the statute of limitations and that Christine's amendment did not relate back to the original date of her complaint because she did not comply with Civ.R. 15(D). After briefing back and forth, the trial court granted the motion and dismissed the defendants. Christine appealed

and the Fifth District reversed. The unhappy defendants asked the Ohio Supreme Court to take the case, which the High Court agreed to do.

The Question:

Lewis addresses the interaction between two important procedural devices: Civil Rule 15(D) and R.C. 2323.451(D). The first device, Civ.R. 15(D), allows a plaintiff who "does not know the name of a defendant" to designate the defendant "by any name and description" and then, once their name is discovered, requires the plaintiff to add the name to their complaint by amendment. As stated above, Civ.R. 15(D) requires the plaintiff to request summons with the words "name unknown" and then serve that summons upon the defendant. The second device, R.C. 2323.451(D)(1)-(2), affords a plaintiff who files suit within the one-year statute of limitations a 180-day extension to " join in the action any additional medical claim or defendant" via Civ.R. 15 amendment.

The Court answered two questions. First, whether a plaintiff must comply with Civ.R. 15(D) to avail herself of the 180-day extension to commence a medical-claim action against additional defendants under R.C. 2323.451(D). Second, whether the 180-day extension applies only to newly discovered defendants who were not contemplated when the original complaint was filed. In a victory for the plaintiffs' bar, a unanimous Court answered both questions in the negative. Justice Fischer penned the opinion.

The Law:

To answer the first question, the Court began with the purpose of Civ.R. 15(D). That rule, the Court observed, serves a limited function: to accommodate a plaintiff who has identified an allegedly culpable party but does not know the name of that party when they file the complaint. However, Civ.R. 15(D) does not allow a plaintiff to designate defendants using fictitious names as placeholders. The complaint must be filed within the statute-of-limitations period and identify defendants well enough to issue a summons and personally serve them. This procedural bottleneck has long incentivized plaintiffs to file "shotgun" pleadings that named every possible defendant so that the plaintiff could preserve their claims. Name first, investigate and winnow down later.

The Ohio General Assembly enacted R.C. 2323.451, in part, to address the procedural bottleneck. The Court observed that, by giving plaintiffs a 180-day extension past the statute of limitations period to name "additional" defendants, R.C. 2323.451 flipped the script. A plaintiff could leave individual defendants out, then, after suing the hospital and further investigating, add in the individual defendants through a valid amendment. Investigate first, name later.

Because R.C. 2323.451 was enacted to address the issue created by Civ.R. 15(D), it would make little sense to require plaintiffs to follow both. The defendants, in essence, wanted the Court to reintroduce the bottleneck. Aside from the practicalities, the plain text of R.C. 2323.451 did not require compliance with the cantankerous John Doe procedure. It unambiguously requires a plaintiff to amend her complaint "pursuant to rule 15 of the Rules of Civil Procedure," without specifying a particular division of that rule. Thus, after they utilize the 180-day extension to learn a defendants' name, a plaintiff can pick from the divisions of Civ.R. 15 to amend their complaint. Civ.R. 15(D) is not the be-all and end-all of professional negligence pleading.

The Court then turned to address the second question, whether the 180-day extension applies only to newly discovered defendants who were not contemplated when the original complaint was filed. The court distinguished Civ.R. 15(D), which requires that the defendants' names be "not know[n]," from R.C. 2323.451(D), which allows the plaintiff to name "additional" defendants. The plain meaning of the phrase "additional" is, unsurprisingly, broader than the phrase "unknown."

The text of neighboring provision R.C. 2323.451(C) makes this conclusion unavoidable. R.C. 2323.451(C) references division (D)(2) and states that "parties may seek to discover the existence or identity of any other potential medical claims or defendants *that are not included or named* in the complaint." This makes clear, as the Court noted, that "additional" defendants are those who were not included as party-defendants when the original complaint was filed, regardless of whether their existence was contemplated at the time of filing. Thus, R.C. 2323.451(D) does not forbid a plaintiff from taking advantage of the 180-day extension simply because they know the defendant's identity. The statute is considerably broader than the rule.

The Practical Implications:

This case was a monumental win for the plaintiffs' bar. Investigating medical claims is a difficult process that takes time. Most plaintiffs wait before retaining counsel, who must figure out the correct medical system and employees to sue and the correct cause of action to bring. While counsel investigates, the statute of limitations clock is ticking. By clarifying that R.C. 2323.451(D) provides a safety valve more generous in nature and broader in scope than the Ohio Rules of Civil Procedure, *Lewis* will prevent countless cases from dying on the vine. We look forward to seeing it cited in briefs throughout the state. ■

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Show Us The Money – It's The Law

by Caroline B. Ford

It may come as an unmitigated shock to attorneys reading this article that defendants generally do not want to disclose their true financial status to plaintiffs during discovery. And not only that – but defendants will routinely strategically delay the discovery process to avoid telling a plaintiff that they, in fact, do have enough money to cover the judgment the plaintiff is entitled to.

Who would have thought that defendants would try to get plaintiffs to accept the smallest settlement possible?

Every attorney, whether they have been practicing for 30 years or 3 months, knows that discovery can be chaos. We are all guilty of engaging in a variety of discovery shenanigans, (to use the technical term), that use the rules and the law to advance our client's position. But before ever employing those strategies, there are basic rules that all parties to a litigation must comply with in good faith; one of which is initial disclosures.

Initial disclosures were adopted by federal courts, in part, to allow "counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation."[1] Parties must automatically disclose the names of potential witnesses, locations of documentary evidence, computation of damages, and potentially applicable insurance policies before the first case management conference. The goal is to "accelerate the exchange of basic information about the case and to eliminate the paperwork involved in requesting such information."[2]

In other words, initial disclosures ensure all parties are starting on the same playing field. Parties are required to disclose basic information about their positions so that they, and the court, can begin to make out the boundary lines of a case and find a path to resolution.

The Ohio Supreme Court amended the Ohio Rules of Civil Procedure in July 2020 to incorporate the initial disclosures requirements of Fed. R. Civ. P. 26(a)(1). In the revised Ohio R. Civ. P. 26(B)(3), the Court sought to bring the Ohio rules closer to the federal rule, to accelerate the discovery process.[3] Those attorneys who also practice in federal court were already well-acquainted with the requirement, as Fed. R. Civ. P. 26(a)(1) has been a national rule since 2000.

Initial disclosures are not, therefore, a novel concept of law despite their relatively recent adoption in Ohio. In the same way that you would not play soccer on a pitch-black, dark field, initial disclosures require that the stadium lights be turned on so that all parties operate in the light and can see the goal posts on both sides. There will still be plenty of room to strategize, outsmart, or outmaneuver the other side as discovery proceeds–but Rule 26 mandates that it must be done in the light.

One of the most important components of initial disclosures is often overlooked or obscured in the

shuffle of fact discovery: the insurance policy disclosure requirement.

Insurance policies have long been considered discoverable material. In 1970, the Federal Rules of Civil Procedure were amended to affirm that insurance policies were discoverable, even before the adoption of an initial disclosure procedure. As a practical matter, this makes sense because insurance coverage is specifically created to satisfy legal claims and insurance companies play a large role in the litigation and/or settlement process.[4]

The Ohio Supreme Court recognized the same discoverability requirement in adopting Rule 26(B)(2). The rule requires disclosure of the "existence and contents any insurance agreement"[5] which may be implicated in the case. While Rule 26(B)(2) remains in the current Ohio Rules, under amended Rule 26(B)(3), the production of insurance policies is required automatically—at the start of the case, without the need to issue discovery requests for policies. Specifically, the rule requires that both parties produce:

> "for inspection and copying as under Civ. R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment."[6]

The rule is definitive and clear; a rarity in our profession. It does not state that a mere description of the policy is sufficient under the rule. The receiving party is entitled to the full, written copy of the insurance agreement for review automatically–without needing to ask.

This is true for all parties in litigation, although typically the disclosures will come from a defendant. The information is usually readily available at the onset of a case and provides the parties and the court with a way to begin fairly appraising a case.

Yet, there are reports that defendants are increasingly obfuscating that requirement—and plaintiffs are not calling them out on it. The defendant either declines to produce applicable policies at the start of the case, promises to supplement disclosures with the policy at a later time and fails to do so, or blatantly misrepresents in verbal or written conversations the state of the policies.

Plaintiff's attorneys should take extra care to ensure that defendants are held to their Rule 26(B)(3) obligations. If we do not, our clients may be manipulated into accepting less than they deserve in settlement.

For example, imagine you are representing a car accident victim. Your client was significantly injured in the accident, is facing extensive medical bills exceeding $150,000, recovery time that prohibits them from returning to work for at least eight months, and other compensatory costs. In your initial conversations with opposing counsel, they represent to you that the maximum coverage allowable under the insurance policy is $200,000.

You take them at their word—despite knowing the defendant's Rule 26 obligation is to disclose all policies—and advise your client accordingly. But, unbeknownst to you, the defendant is covered by multiple insurance policies that could cover up to $1,000,000 in your client's case. And none of this is made known to you until both parties attend mediation—or worse, after settlement is finalized.

Unless the attorney insists on reading the policy and getting a written acknowledgment from opposing counsel that it is the *only potentially implicated* policy, the attorney will never know of additional policies and will have no recourse to bring the matter to the court. They will be leaving money on the table.

Attorneys all have a duty of candor in communicating with each other, our clients, and the court. It may seem reasonable to take opposing counsel at their word rather than insisting on reviewing the policy, particularly if you have resolved cases with them in the past. But that is not the guarantee of transparency the Civil Rules require. If we do not consistently exercise the rule, defendants will continue to keep plaintiffs in the dark.

This is not to suggest that every omission regarding an insurance policy is done knowingly or in bad faith. Opposing counsel may simply not have conducted a full review of *every* insurance policy beyond individual liability insurance. They may be unaware of the terms of every policy held by their clients, or their clients may not readily offer that information. But that makes it all the more important that they are held to their disclosure obligations from the beginning and forced to investigate their client's insurance status.

Further, attorneys should bear in mind that there may be multiple policies applicable to a case. Rule 26 requires disclosure of all policies—not just the one defendants hope will be sufficient to cover a particular settlement. There are few, if any, Ohio cases that deal with the production of insurance policies under Rule 26(B)(3), due in part to its recent introduction. Ohio federal courts, however, have ordered the production of excess insurance policies and similar liability coverage in addition to the production of a single professional liability insurance policy.[7]

Until all parties have the physical policy in hand and a written representation

from counsel that that document encompasses all policies potentially implicated in the claims, Rule 26 obligations have not been met.

Because of the risk that one party may withhold umbrella coverage or excess insurance policies during the initial disclosure phase, it is also prudent for plaintiffs to include requests for copies of all policies in initial document requests as well as issue interrogatories inquiring into the amount of coverage and number of insurance policies. This way, defendants will need to verify the answer to the interrogatory about insurance coverage and could be deposed on that point if necessary.

It may be easy to get bogged down in substantive fact discovery, but the importance of obtaining compliant initial disclosures from both sides should not be overlooked. It is still a relatively recent development in Ohio practice, such that attorneys and courts may be slow to recognize the importance of the rule. But if attorneys do not insist on receiving full and complete information under Rule 26, the other party may be liable to "forget" to provide this key information.

It is best practice to make a record of any failure to comply with Rule 26. If opposing counsel communicates the details of a policy verbally–make a written record of it. If counsel provides a single policy–ensure they affirm, in writing, that there are no other existent policies. If they fail to provide any policy–inform the court. Otherwise, you may end up advising your client to take a settlement offer that leaves money on the table. ■

End Notes

1. Fed. R. Civ. P. 26, Advisory Committee's Note to 1970 Amendment.
2. Fed. R. Civ. P. 26(a), Advisory Committee's Note to 1993 Amendment.
3. Ohio R. Civ. P. 26(B)(3), Staff Note to July 1, 2020 Amendment.
4. Fed. R. Civ. P. 26, Advisory Committee's Note to 1970 Amendment.
5. Ohio R. Civ. P. 26(B)(2).
6. Ohio R. Civ. P. 26(B)(3)(a)(iv).
7. *See e.g. N.T. by and through Nelson v. Children's Hospital Medical Center*, 2017 WL 5953432, *2 (S.D. Ohio)("plaintiff has a valid basis to believe that excess policies may be triggered, meaning they are policies under which an insurance business 'may' be liable; Defendants are thus ordered to produce the excess policies")(internal citations omitted).

Editor's Note

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

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

Kathleen J. St. John, Editor

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Pointers From The Bench:
Judge Carl J. Mazzone -- A Prosecutor's Heart and a Judge's Mind

By Marilena DiSilvio

Judge Carl J. Mazzone was elected in November 2024 to a six-year term on the Cuyahoga County Court of Common Pleas, General Division, beginning January 6, 2025. He succeeds Judge Daniel Gaul.

A lifelong Clevelander, Judge Mazzone is a proud graduate of St. Edward High School and the University of Dayton. He earned his law degree from Case Western Reserve University School of Law in 2010. Before entering the legal profession, he worked in the admissions office at Baldwin Wallace University, assisting students through the college admissions process.

From Childhood Aspiration to Career in Law

Since childhood, Judge Mazzone knew he wanted to become a prosecutor. Although not from a family of lawyers—his father is a CPA and his mother is a retired administrator for the County Board of Health—he was inspired by the television character Jack McCoy from *Law & Order*. That interest led him to pursue a career focused on courtroom advocacy and public service.

After law school, Mazzone joined the Cuyahoga County Prosecutor's Office, where he spent more than a decade handling serious criminal cases. Between 2010 and 2024, he handled approximately 3,000 adult felony cases, developing extensive trial experience trying more than 90 to verdict.

Before serving in the General Felony and Major Trial Divisions, where he prosecuted homicides and sexual assaults, he worked in the Child Support and Juvenile Divisions. Those experiences provided him with a broad understanding of the justice system, from family matters to complex felony prosecutions.

Judge Mazzone in his days as prosecutor.

On the Bench

Judge Mazzone brings to the bench the discipline and perspective of a career trial lawyer. He emphasizes preparation, punctuality, and strict adherence to the Rules of Evidence. His trial dates are firm, and he expects attorneys to arrive ready to proceed.

Judge Mazzone issues written opinions in summary judgment proceedings, conducts hearings as necessary on discovery and other matters, and prefers broad and thorough discovery before trial. When privilege issues arise, he conducts in camera inspections prior to issuing rulings. After discovery concludes, questions of admissibility are resolved through Motions in Limine, which he prefers to address the week before trial. Judge Mazzone makes himself available to parties either by phone or in person to discuss discovery issues that arise before parties begin filing motions to compel.

Earlier this year, Judge Mazzone presided over a complex civil matter involving 30 Motions in

Limine, all heard and decided prior to trial. His docket includes cases inherited from Judges Gaul, Burnside, and McGinty, who served in the 18 months prior to his taking office. He has already tried six civil cases in his first year on the bench, including two workers compensation matters, a CSPA action, a matter involving violation of trade secrets and a civil battery case that arose from a rape case in which the defendant had been acquitted.

Courtroom Practice and Procedure

Judge Mazzone begins trial days promptly at 8:30 a.m., takes a midmorning break, and holds an early lunch before noon to avoid Justice Center elevator congestion. Proceedings resume at 1:00 p.m. and continue until 4:30 p.m. He accommodates scheduling needs, including when witnesses must complete testimony before day's end.

He places particular importance on voir dire and expects attorneys to question the entire jury panel, though only those seated in the box may be stricken. Peremptory challenges are exercised outside the presence of the jury. Judge Mazzone conducts his own individual voir dire, asking prospective jurors questions such as:

- "Would you describe yourself as a follower or a leader?"
- "What one word would you choose to describe yourself?"

Once the jury is sworn, he reminds counsel that proceedings are conducted on the jury's time.

Teaching and Mentorship

Since 2017, Judge Mazzone has coached mock trial at St. Edward High School, alongside a number of alumni "legal eagles." The St. Ed's team won the Ohio State Championship in 2023. A plaque commemorating the championship is proudly displayed in his chambers. All Hail the Green and Gold! He has served on the St. Edward's Alumni Association Board of Directors, and the Legal Eagles Executive Board as well.

Judge Mazzone and family.

His advice to young advocates and students is consistent: "In the practice of law, your word and your reputation are all you have. Remember that."

Judge Mazzone emphasizes professionalism and civility among lawyers and expresses concern that modern practice, with fewer repeated encounters among opposing counsel, has reduced collegiality. He encourages attorneys to remain civil, to respect one another, and to respect the process. He expects all participants in his courtroom "to revere the system as much as I do."

Life Beyond the Bench

Judge Mazzone lives in Fairview Park with his wife and their three beautiful, fun and inquisitive children: an 11-year-old son, a 7-year-old daughter, and a one-year-old baby boy. His son enjoys competitive climbing and baseball, while his daughter plays soccer and participates in climbing and gymnastics.

Each morning before school he asks his son and daughter what the two rules are, to which they reply: "Be nice to people, and work hard." These are the values Judge Mazzone holds most dear.

Outside of work, Judge Mazzone enjoys golf – a lot! He has long coached baseball, his favorite sport. A devoted—if often tested—Cleveland Browns fan, he approaches both the field and the courtroom with patience, persistence, and a sense of optimism.

A Judicial Approach Grounded in Integrity

Judge Carl Mazzone's career reflects a lifelong commitment to public service, fairness, and respect for the law. As both a former prosecutor and a current judge, he combines trial experience with a steadfast belief in preparation, professionalism, and accountability—principles that guide his courtroom and his service to the people of Cuyahoga County. He also welcomes lawyers to his chambers to discuss maintaining integrity in the profession and his favorite aspect of litigation – trial. ■

Verdict Spotlight

Estate of Janene Roberson v. CCH Healthcare, LLC, et al.

by Nicholas A. DiCello and Dustin B. Herman

On July 3, 2025, a Hamilton County jury returned a verdict of $17,675,000 in a nursing home wrongful death case.

The decedent, Janene Roberson, was a 52-year-old African-American woman with advanced ("end stage") multiple sclerosis who had been living at the nursing home for about 4 years prior to her death. She was severely debilitated, having only limited use of her right arm; otherwise she was quadriplegic. She had neurogenic bowel and bladder and had a suprapubic catheter. The defense argued she only had 4-6 weeks to live. She was survived by two older sisters, one in her 50's and the other in her 60's. She had no spouse and no children.

One Saturday morning a nurse noticed a change in Janene's condition. Janene could not speak and was slurring her speech, she could not move her right arm (her good arm), and she did not eat breakfast. The nurse sent a text message to the nurse practitioner. The nurse practitioner responded to the text by ordering STAT blood work and a chest x-ray. Thereafter there was no communication between the NP and the nursing home for 13 hours. Janene continued to decline throughout the day. She was finally sent to the hospital at about midnight. The first time the family was notified about the change in condition was at around midnight when Janene was being sent to the hospital.

When Janene got to the hospital she was noted to be mumbling unintelligibly, and there was a "foul-smelling stool-like substance was covering her catheter" and oozing out around the insertion site. She was also noted to have massive rectal fecal impaction extending up into the colon that had to be manually disimpacted in the emergency department. She was admitted with primary diagnoses of severe sepsis and kidney infection, with concerns for pneumonia and colitis. She fought for her life for over a week, but eventually died. Before her death she went severely anemic, but could not receive a blood transfusion because she was a Jehovah's Witness. The death certificate listed sepsis and a kidney infection as the causes of death.

Nicholas A. DiCello

Dustin B. Herman

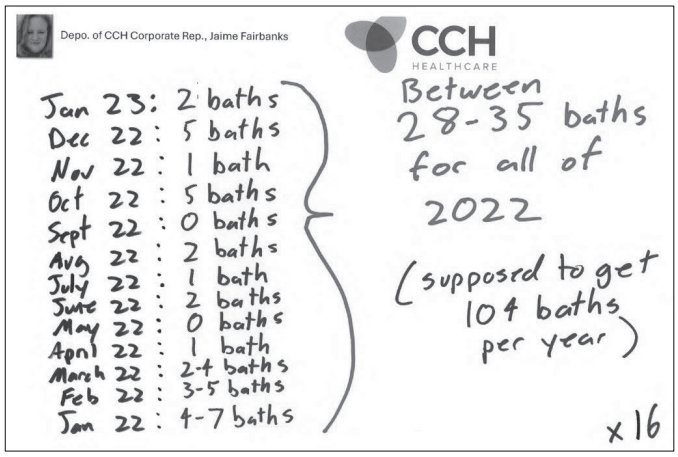
We tried a simple case: there was a delay in sending Janene to the hospital, which caused her death. We also alleged there was a delay in notifying the family about her change in condition, and that the family would have demanded she be sent to the hospital if they had been notified. The defense argued that there was no need to send her to the hospital any earlier and that sending her to the ER a few hours earlier would not have made a difference since she survived for over a week. We had a great emergency room and infectious disease expert who explained to the jury that when it comes to sepsis—every hour matters—and that is the reason we now have all these sepsis alerts and sepsis protocols. Time to antibiotics is critical, and once a patient is in septic shock, all bets are off.

The defense also had two experts who testified that Janene never had sepsis and that she died from pneumonia, severe

anemia, and complications of her MS. They essentially tried to blame her death on the fact that she was a Jehovah's Witness and could not receive a blood transfusion. We were ready for that. We had our expert explain that it was sepsis that was causing the anemia and Disseminated Intravascular Coagulation (DIC) and that no amount of blood transfusions would have saved her life.

Additionally, we brought a nursing home bill of rights claim for the failure to adequately bathe Janene for an entire year (we did not connect this to her death). We simply alleged that the lack of bathing violated Janene's right to be treated with dignity.

We created the following exhibit during a deposition of the nursing home corporate rep. It took 45 minutes to create in the deposition while we went through over 100 pages of nursing aid records. We had the witness confirm in the depo that the exhibit fairly and accurately represented the information contained in the medical records. We then used the exhibit at trial in opening statement and with the corporate representative on the stand. We eventually admitted it into evidence—without objection—as a summary of voluminous records.



The defense put a lot of emphasis on the fact that Janene was in end-state MS and did not have long to live. They suggested a total verdict of $225,000 if the jury were to get to damages.

We embraced her disease in closing. Nick reminded the jury how Janene's MS made the relationship with her sisters stronger. They were more than just sisters. They were her caretakers for years while she battled MS. They protected her. And when they couldn't take care of her anymore, they trusted the nursing home to take care of her. And they are tormented by the fact that they were just down the street and never received a call when Janene needed help the most. In closing, Nick told the jury: "It's natural to put yourself in their shoes and think what this kind of loss would be worth to you, *but you can't do that*. That is not allowed. That is outside the box. Instead, *what you have to do is much harder*. You have to make that decision for someone else, for these two women. You have to decide what losing their sister in the way they did is worth to them."

On Thursday afternoon of the second week of trial, the jury returned the following plaintiff's verdict: $10,225,000 in past wrongful death damages, $2,225,000 in future wrongful death damages, $1,225,000 in damages for the nursing home bill of rights claim, and $4 million in survivorship damages. The judge did not allow us to proceed to punitive damages.

We had wonderful, deserving clients, and the jury could feel how devastated they were over the loss of their sister. Justice prevailed! ■

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In Memoriam: Marshall I. Nurenberg

By David M. Paris

Marshall Nurenberg passed away peacefully with family at his side just four months after celebrating his 100th birthday. A milestone for sure, but one of many achievements in a life well lived and a legal career matched only by a select few attorneys in the country.

When I joined the firm as a law clerk in 1976, Marshall had already achieved legendary status as an extraordinarily gifted trial lawyer. His intellect was unmatched; his brain was wired in a way that allowed him to analyze complex issues involving defective products, medical negligence, railroad operations and equipment, and aircraft safety, then explain them in easy to understand language, for jurors, judges, experts, and those of us he mentored. While most lawyers were preparing multi-page outlines for voir dire, opening, direct, cross, and closing, Marshall used very few, if any, notes. His deliveries were extemporaneous and better organized than a written script. He had a near photographic memory and often referred to case precedents by name, volume, page number, court, and year of the decision. Same with evidentiary and procedural rules. And he did this all without a hint of braggadocio. He was humble. And he was old school.

Marshall exemplified the best qualities of our profession. He took the high road, regardless of the stresses of a case or the behavior of opposing counsel. He gave his word and kept it. No need to "put it in writing". He was scholarly and a true student of the law. Whenever a new case was decided or statute enacted that affected any aspect of our practice, Marshall was the first to analyze it and prepare and circulate a memo to the firm as to how this affected our clients. He was generous with his time and enjoyed helping other lawyers improve their craft. In the early days of CATA, Marshall was a regular presenter at CATA meetings at the Blue Fox where he and other legends, like Fred Weisman, Larry Stewart, Don Traci, and Craig Spangenberg, educated the rank-and-file of the plaintiff's bar. He was a member of many trial lawyer academies that were by invitation only.

Marshall was not only a great trial lawyer for personal injury victims, he was also a gifted appellate lawyer. There were very few, if any, personal injury cases that found their way into the United States Supreme Court. In 1963, Marshall argued and prevailed in *Gallick v. B&O Railroad*, 372 U.S. 108 (1963), a personal injury case where the jury awarded our client $625,000 – a huge amount in 1959 dollars. And while nearly all of his trials involved injuries, he believed that one could not be a "complete" trial lawyer without trying a capital murder case. Fortunately, his folly into the criminal theater was short lived, prompting then Common Pleas Judge, John Manos, to say: "Well, Marshall, congratulations. Your client is getting life in prison, but at least you didn't send him to the electric chair".

We learned so much from Marshall. But above all else, he was dedicated to the well-being of his clients and to the rule of law. Near the end of his career, a former client called him. She had slipped and fallen and hurt her back. He was a "big case" lawyer, but he took the case because he believed he could help her. He did not pass the case off to a young associate. He was not too proud to walk into court with no offer on the table. And when the jury returned a defense verdict, he said: "The American jury system is the finest legal system in the whole world. I can't think of a better way to have spent my career."

Beyond The Practice: CATA Members In The Community

by Dana M. Paris

Nurenberg Paris - CBMA Run for Justice

Nurenberg, Paris proudly participated in the Cleveland Metropolitan Bar Association's Run for Justice in 2025, an event that benefits the Cleveland Metropolitan Bar Foundation (CMBF) and reflects our firm's commitment to supporting access to justice and strengthening the legal community in Northeast Ohio. Our attorneys, staff, and their families joined colleagues from across the region to raise awareness and funds for the CMBF, whose mission is to advance pro bono initiatives, justice-focused programming, and community outreach that serves vulnerable individuals in Greater Cleveland.

By sponsoring and fielding a strong team at this year's event, our firm helped further the Foundation's work to promote fairness, equity, and opportunity within the justice system. Participating in the Run for Justice provided our team a meaningful opportunity to connect outside the courtroom while supporting a cause that deeply aligns with the values that guide our practice.

NPHM Team at CMBF Run for Justice

Susan Petersen - Petersen Expands Leadership in the Arts and in Global Healthcare Data Integrity

CATA member Susan Petersen has joined the Board of Directors of the Museum of Contemporary Art Cleveland (MoCA). The appointment marks a purposeful new chapter – one she celebrated with family and close friends at MoCA's recent Fall fundraiser. Petersen has spent the past year intentionally expanding her world, drawing inspiration from artists and creative leaders. She embraced the concept of *meliorism* – the belief that we can make things better through intentional effort – and has used it as a guiding force in her personal and professional reset. A turning point came in March, when she introduced rising contemporary artist **Halim A. Flowers** at the International Society of Barristers Annual Meeting in Aruba. Flowers, a nationally recognized visual artist, author, and speaker, is known for his powerful narrative of personal transformation and his vibrant work exploring justice, humanity, and possibility. The connection energized Petersen's commitment to art, perspective, and renewal. Her new role at MoCA reflects the same strategic insight and bold advocacy she brings to her trial practice – now extended to one of Cleveland's leading cultural institutions. Join her in supporting this creative momentum. Become a MoCA member and help strengthen Cleveland's contemporary art community at www.mocacleveland.org.

Susan and Todd Petersen team at MOCA fundraiser

Petersen has also been selected to serve on the IEEE Standards Association Global Electronic Health Records (EHR) Data Quality Workgroup, an international team of technologists, clinicians, lawyers, and policy leaders developing new global standards to strengthen the accuracy, auditability, and integrity of electronic health records. The Institute of Electrical and Electronics Engineers (IEEE) – the world's largest technical standards organization – is rapidly shaping the future of healthcare data governance, both nationally and internationally.

Susan Petersen and artist Halim A. Flowers

Her appointment reflects her recognized expertise in electronic medical record forensics and audit-trail analysis, and her long-standing advocacy for patient rights in Ohio, where she has pushed for full access to complete audit trails and unaltered EMR data.

Together, her national policy work and her state-level advocacy place Petersen at the forefront of shaping how healthcare data integrity is protected. Across technology, public policy, and the courtroom, she continues to exemplify intentional, principled leadership.

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 2025-2026

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

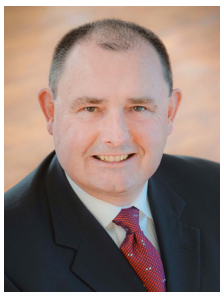
Recent Promotions and New Associations

We're proud to welcome **Meghan Connolly** and **Ellen Hobbs Hirshman** to the Tittle & Perlmuter team, where they bring decades of combined litigation experience and an unwavering commitment to client advocacy. Their addition reflects our continued growth and dedication to delivering exceptional legal representation.

Nurenberg, Paris, Heller & McCarthy Co., L.P.A. is pleased to welcome **Molly A. Ebraheim**. Molly's practice focuses on auto accidents, truck accidents, and other personal injury cases.

Nurenberg, Paris, Heller & McCarthy Co., L.P.A. is pleased to welcome **Aidan Miller**, graduate of Temple University Beasley School of Law, as an associate attorney. Aidan's practice focuses on auto accidents, truck accidents, medical malpractice, and other personal injury cases.

Honors, Awards, and Appointments



Christian R. Patno was sworn in as Ohio ABOTA President on November 13, 2025.

Murray and Murray Personal Injury Lawyers made Crain's 2025 list of Ohio's Best Places to Work.

2025 CATA Annual Dinner



































Verdict Spotlight

Southern Ohio jury awards $404,000 in damages to Lucasville inmate on excessive force and retaliation claims in federal case against Ohio corrections officers

by Pattakos Law Firm LLC

After a week-long trial in the Potter Stewart U.S. Courthouse in Cincinnati, a jury empaneled by the U.S. District Court of the Southern District of Ohio, the Honorable Jeffrey Hopkins presiding, awarded our client Tommy Meadows $404,000 ($209,000 in compensatory damages plus $195,000 in punitive damages) on civil-rights claims against two corrections officers and a lieutenant at the Southern Ohio Correctional Facility in Lucasville.

The jury found that these officers violated Meadows' Eighth Amendment right against cruel & unusual punishment and his First Amendment right to petition the government for redress of grievances:

First, by bashing his skull into a concrete wall and floor in a needless and gratuitous takedown and pile on;

24 A. It's a small, confined space, and with him
25 resisting like that, it's -- you know, initially

14

1 trying to get him away from you and when he's
2 pulling away from you, you're just trying to gain
3 control of the situation.
4 Q. What was the need to take him down at that point?
5 A. Because pushing him forward wasn't working.
6 Q. How is it not working?
7 A. Because he's resisting, he's shoving back. He's
8 using his bodyweight, pushing against me.
9 Q. Well, didn't you have to wait for this door to
10 open?
11 A. Yeah.
12 Q. Door is not open yet, so what's happening?
13 A. He's turning on me. You see that [indicating].
14 Q. Okay.
15 A. You see he's turning on me [indicating].
16 Q. So he turned and that's what caused you to need
17 to --
18 A. He turned and spit on me.

Q. What did he say? What were the words that he said? You said he was making threats to spit. How did he make those threats?

Case: 1:21-cv-00322-JPH-KLL Doc #: 58 Filed: 03/02/24 Page: 44 of 126 PAGEID #: 475

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A. Where at?
Q. Any time here. In this two minutes before --
A. On the floor he was saying that *I'm going to spit in you guys' face* on the floor. So that already had me thinking, hey, but right here [indicating], I don't know what he said. He didn't say it right before he did it, he just turned and went.

Q. Him spitting didn't keep you from getting him in the strip cell, did it, sir?
A. No. Okay.

Then, by blasting him in the face with pepper spray on two separate occasions while he was locked and cuffed alone in a strip cell (note the time stamps in the upper left corner of the images below);

Q. So I want to go back to the question of why you felt it necessary to deploy pepper spray at that point. The situation was under control at that point, wasn't it?
A. Well, it was sprayed to prevent him from doing it again because it was reactive, because the OC canister was already out. He spits, you react to his reaction. He was given orders to face the wall, the OC took effect, and he complied. I

Then again – after Meadows' then-girlfriend Madeleine Smith (now his wife, then a PhD student in Ohio State's English Dept. and a member of the Redbird Books-to-Prisoners organization, who fell in love with him while he was behind bars in what is an amazing and beautiful story in itself) proved that his grievance forms were wrongly suppressed by prison officials, and got the ODRC Chief Inspector to acknowledge and process the grievances months after they were filed – filed obviously false and retaliatory disciplinary charges against him.

Conduct Report

Institution: SOCF		SOCF-19-002720
Name: MEADOWS, TOMMY	Number: A438207	Lock: E/J1/14
Date/Offense: 07/31/2019	Time/Offense: 01:45 PM	Location: K2 South
Rule(s) Violated: 08 Threatening bodily harm to another (with or without a weapon)		

Supporting Facts (Describe what occurred and how the inmate violated the rule[s]):

Be advised on the above date and approximate time, I officer Plowman was sitting on constant watch in K2 when I over heard inmates Williams 681-989 K2-21, and Meadows 438-207 K2-24 talking about how they want to get on death row. During the conversation both inmates stated the only way to get on death row was to kill someone. As the conversation continued inmate Williams stated that killing another inmate wont get them placed on death row. Inmate Williams then stated that they would have to kill a Corrections Officer for the courts to put them on death row. At this point in the conversation inmate Meadows stated that inmates at Lucasville already tried to kill a male corrections officer and it didn't work. Inmate meadows continued to say that it would have to be a female corrections officer next time because it would be easier. Both inmates stated just need the right time and the right tools to do it.

These false charges were based on the absurd claim by one of the defendant-officers who was involved in the excessive force incident, that he happened to have overheard Meadows, while Meadows was in a restrictive housing cell, plotting with an inmate 3 cells over from him (by shouting through the bars of the front of their cells) to "land on death row" by killing a corrections officer, even though he was eligible for parole in two years and was (as love letters introduced as evidence clearly showed) falling in love with the woman who eventually became his wife. This false report, completely uncorroborated by any other evidence (the reporting officer couldn't even remember which supervisor he claimed to have reported this "threat" to, and no surveillance footage was pulled to even show that these two inmates were even plausibly talking with one another at the time), landed Meadows in restrictive housing for an additional 2 years.

Bureau of Classification's ERH Placement Decision

(This form shall include every basis for the BOC's decision and is not to be merely conclusory.)

Inmate Name:	Inmate Number:	Case Number:	Institution:
Meadows, Tommy	A-438207	SOCF-19-2720	Southern Ohio Correctional Facility

Issue being considered for the proposed placement: The issue to be considered is whether the inmate's already proven conduct, in conjunction with an assessment of the inmate's overall record, demonstrates that the inmate is unable to function in a less restrictive environment without posing a serious threat to other inmates, staff, the orderly operation of the institution, or the general public. In addressing this issue, the Bureau will determine whether the inmate's proven behavior falls within any of the categories below.

- ☐ Assault, related acts
- ☐ Nature of criminal offenses or offenses in other correctional jurisdictions
- ☐ Inmate involvement in serious riot or disturbance
- ☐ Inmate has conspired or attempted to convey, introduce, or possess major contraband
- ☐ STG leadership, enforcer or recruiter
- ☐ Group violence
- ☐ Escape or related acts
- ☐ Compromising the integrity of staff which resulted in a threat to the security of the institution or the general public
- ☐ Knowingly exposing others to contracting a dangerous disease
- ☐ Repetitive violence and threatening behavior at level 4
- ☒ Threatening behavior combined with a history of assault while incarcerated
- ☐ Inmate committed an offense which constitutes a serious threat to the safety and security of a correctional facility or the community

Security Level (at time of placement): E

Inmate's Mental Health Level: C2

Is Inmate IDD? ☐ Yes ☒ No

SMP guilty findings:

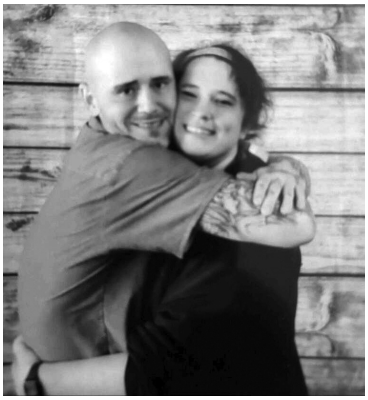
8

Summary of placement incident:

On July 31, 2019, an Officer heard Inmate Meadows and Inmate Williams talking about how they want to get on death row. Both inmates stated the only way to get on death row was to kill someone. Inmate Williams stated that killing another inmate won't get them on death row and that they would have to kill a Corrections Officer for the courts to put them on death row. Inmate Meadows stated that inmates at Lucasville already tried to kill a male Corrections Officer and it didn't work and it would have to be a female Corrections Officer. Both inmates stated they just need to right time and right tools to do it.

Despite the clear video evidence showing the gratuitous excessive force used by the officers, and their obvious retaliation against Meadows for trying to file a grievance against them, the most the government ever offered to settle these claims before the verdict was $5,000. The defendants, one of whom (the lieutenant) was promoted by the Ohio Department of Rehabilitation and Corrections to a "Commander" position covering the eastern half of the state after these events unfolded, all maintained on the stand that they had no regrets and wouldn't do anything differently today. Now they are on the hook for $404,000 in damages, plus our attorneys' fees as required by the civil rights statutes.

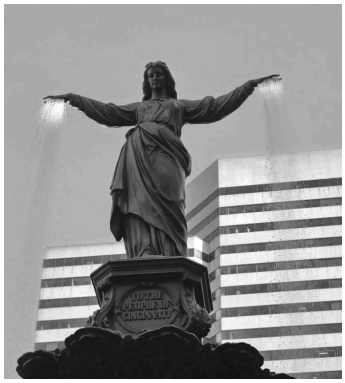
This trial included one of the most beautiful moments we've ever seen in a courtroom: Madeleine testifying about how she fell in love with Tommy; how she had heard from the other Redbird members about him before she had ever met him or read his letters; about his efforts to organize his fellow prisoners and stop the gang violence prevalent within the prison system; the care and concern he showed for his fellow inmates and their rights; and about how the jail officers all knew that Tommy was a "square peg" within the system in a good way: "someone who couldn't have the humanity beaten out of him."



The jurors – who came from all over the southwest corner of the state, from Cincinnati to Ironton – obviously and thankfully understood how important it was to punish and deter any such conduct in the future, and that if the least among us don't have basic civil rights, then no one does. As attorney Peter Pattakos urged during closing arguments, DRC stands for "Department of Rehabilitation and Correction," not "Torture and Misery."

Our thanks as always to the jury, as well as to Judge Hopkins and his staff for ensuring a fair and efficient trial, and for the Great American Tradition of the jury trial, the most sacred of our rights as Americans and the most fundamental guarantee of same. And last but not least to our very distinguished co-counsel Emmett Robinson, who handled all of the pretrial briefing and briefing on summary judgment and was second-chair at trial.

This verdict should send a clear message that substantially improves the administration of our prison system and the protection of all Ohioans' civil rights against abuses of state power. Once again our court system is far from perfect but when it works the way it's supposed to it can be a very glorious thing and it certainly was in this trial in the Queen City. ■



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Recent Ohio Appellate Decisions

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

Durig v. Youngstown, 2025-Ohio-4719 (Ohio S.Ct. Oct. 16, 2025).

Disposition: Supreme Court held City's political subdivision immunity defense was not preserved by asserting defense of failure to state a claim in its answer; and trial court did not abuse its discretion in denying City's untimely motion to amend its answer to assert immunity defense.

Topics: Proper time and methods for asserting affirmative defense of political subdivision immunity; unjustified and prejudicial delay in asserting immunity defense; waiver.

The plaintiff's decedent was seriously injured when a tree fell on him as he was riding his motorcycle on a city street in Youngstown, Ohio. He never recovered from his injuries and passed away two years after the incident. In June of 2019, his estate sued Youngstown, alleging that the city owned the tree as well as the ground upon which it stood and that the city had ignored warnings about the tree's hazardous condition.

In its answer, filed on August 2, 2019, the city raised eleven affirmative defenses, including failure to state a claim, but failed to raise political subdivision immunity as a defense. Over the next two years, litigation proceeded slowly, due, in part, to the recusal of the first assigned judge, the assignment of a visiting judge, and the COVID-19 pandemic. The visiting judge did, however, set a discovery cut-off deadline, a dispositive motion deadline, and a trial date of January 18, 2022.

On October 15, 2021 – the dispositive motion deadline – the plaintiff filed a motion for partial summary judgment on the issues of negligence and proximate cause. The city failed to timely respond to plaintiff's motion, but was granted leave to file an opposition by December 17, 2021, with the caveat that "[n]o further extensions" would be granted. On December 17, 2021, the city filed its memorandum contra to the plaintiff's motion, along with an affirmative motion for summary judgment, raising, for the first time, the political subdivision immunity defense. The plaintiff moved to strike the city's motion for summary judgment on the ground that it was filed without leave of court, failed to include Civ. R. 56 evidence, and improperly raised political subdivision immunity for the first time. The trial court granted the motion to strike, and denied the city's subsequent motion for leave to amend its answer to raise the political subdivision immunity defense. The city appealed the denial of its motion for leave to amend. The court of appeals, in a 2-1 decision, affirmed.

The Ohio Supreme Court accepted the city's appeal to address two issues: (1) whether the political subdivision immunity defense was sufficiently raised and preserved by the assertion of the Civ. R. 12(B)(6) defense or by being evident on the face of the complaint; and (2) whether "[t]o establish 'undue delay' sufficient to overcome the presumption that pleading amendments should be liberally granted, the delay must be attributable to the party seeking the amendment." *Id.* at ¶15.

As to the first issue, the Court reaffirmed the longstanding principle that political subdivision immunity is "an affirmative defense [that] must be specifically asserted in a timely fashion to avoid waiver." *Id.* at ¶17. Thus, even if this defense is obvious on the face of the complaint, it still must be timely raised or else it is waived. Moreover, the political subdivision immunity defense is not adequately raised by asserting the failure-to-state-a-claim-upon-which-relief-can-be-granted defense. Instead, to preserve the immunity defense, "the political subdivision must expressly raise that defense by a prepleading motion under Civ. R. 12(B), affirmatively in a responsive pleading under Civ. R. 8(C), or by amendment under Civ. R. 15." *Id.* at ¶33.

As to the second issue, the Court rejected the city's argument that the trial court abused its discretion by denying its motion for leave to amend the answer to assert the immunity defense. The city argued that the delay was caused by circumstances beyond its control, including the recusal of the one judge and the COVID-19 pandemic. The Court, however, noted that "even if those periods are discounted, the record still shows that a substantial part of the delay was attributable to the city." *Id.* at ¶37. Moreover, the delays that were outside the city's control did not "prevent[] the city from asserting a defense of political subdivision immunity or moving more promptly to amend its answer." *Id.*

In short, by raising the immunity defense "after the discovery and dispositive-motion deadline had expired and the matter was set for trial", the city had prejudiced the estate which had expended time and resources in developing its case. *Id.* at ¶40. Thus, the trial court had not abused its discretion in denying the city's belated Civ. R. 15(A) motion, as the delay was both unjustified and prejudicial.

Hunt v. Alderman, 2025-Ohio-2944 (Ohio S.Ct. Aug. 21, 2025).

Disposition: Affirming summary judgment based on insufficient service of process.

Topics: Service of Process; Civ.R. 4.1(A)(1)(a); procedural due process.

The Ohio Supreme Court's decision in *Hunt v. Alderman* answers a novel procedural question. Is compliance with Civ.R. 4.1(A)(1)(a) (service by certified mail) alone enough to adequately serve a defendant? A 5-2 Court answered in the negative.

Though this case involved a seven-year personal injury dispute, the facts relevant to the Court's procedural holding are straightforward. The Plaintiffs attempted to serve the Defendant via certified mail at his residence in Cuyahoga Falls, which he rented from his father. However, the Defendant had not lived at that address for several years. Plaintiffs, according to the Court, knew this. When service was sent, two people unrelated to the defendant were renting the premises from Defendant's father. Apparently not realizing that it was addressed to Defendant, one of the new tenants signed the certified-mail receipt and took hold of the summons and complaint. Three weeks later, the tenants forwarded the documents to the Defendant's father, who handed them over to the Defendant. The Defendant answered and raised insufficient service of process as an affirmative defense.

The case proceeded for two years until Defendant moved for summary judgment based on his service of process defense. The trial court granted the Defendant's motion, noting that the Plaintiffs' decision to serve the Defendant at an outdated residential address was not "reasonably calculated" to notify him of the action. The Ninth District affirmed, Plaintiffs filed an appeal and Memorandum in Support of Jurisdiction with the Supreme Court of Ohio, and the court accepted the case.

The Court reached three conclusions: (1) service of process must satisfy *both* Civ.R. 4.1(A)(1)(a) *and* the due process "reasonably calculated" requirement, (2) service to a defendant's former residence is not reasonably calculated to reach the defendant, and (3) the fact that a defendant eventually receives the summons does not absolve the plaintiff of their duty to comply with due process.

The service by certified mail rule, Civ.R. 4.1(A)(1)(a), is open ended. While the rule lays out several requirements for *how* service must be sent, it gives no guidance on "where" or "to whom" to send service. To "fill in the gaps of Civ.R. 4.1(A)(1)(a)," the Court drew on several landmark due process cases, including *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403 (1980) and *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). It ultimately held that, "Because service under Civ.R. 4.1(A)(1)(a) must comport with due-process guarantees, sufficient service requires using an address that is reasonably calculated to apprise the defendant of the lawsuit." The lesson from this first part of the Court's analysis is clear: compliance with the black letter of the Ohio Rules of Civil Procedure is not enough–a plaintiff must ensure that their service of process efforts comply with the principles of due process. Counsel managing a difficult service-of-process situation would do well to search for case law applying the "reasonably calculated" standard to similar fact patterns to evaluate whether their efforts pass constitutional muster.

With its freshly minted rule in hand, the Court moved to establish its second conclusion: service to a defendant's former residence is not "reasonably calculated" to reach the defendant. The Court highlighted several important facts. The Defendant did not own, live, work, or receive mail at the service-address property and the Plaintiffs were "indisputably" on notice of that fact. While the Defendant' father owned the property, he rented it to third parties who were under no obligation to forward Defendant's mail to him. The fact that the summons eventually reached the Defendant was "pure happenstance."

Finally, the Court resolved the one snag in the case–the fact that the Defendant *did* receive service of process and litigated the case for two years. The Court concluded that actual delivery makes no difference. Though a defendant might receive actual notice of the action, "service has implications for litigation beyond providing notice." For example, the service date impacts the statute of limitations period and the time to file an answer before defaulting. Relying on actual "happenstance" delivery of the summons injects unworkable uncertainty into civil litigation. That the Defendant arguably suffered no prejudice was of no importance–"[A] showing of prejudice and lack of actual knowledge have never been required for a challenge to service to be successful." Thus, when service of process is not reasonably calculated to reach the defendant, the action is not commenced within the meaning of Civ.R. 3(A), even though the plaintiff has complied with Civ.R. 4 and the defendant has suffered no prejudice. The "reasonably calculated" due process test reigns supreme over service-of-process law, and plaintiffs ignore it at their peril.

Ohio Council 8, AFSCME, AFL-CIO v. Lakewood, 2025-Ohio-2052 (Ohio S.Ct. June 12, 2025).

Disposition: Reversing Court of Appeals' decision and remanding to address unaddressed assignment of error.

Topics: R.C. 4117.11; jurisdiction of State Employment Relations Board ("SERB").

This case is about an employment dispute between Ohio Council 8, AFSCME, AFL-CIO ("Union") and the City of Lakewood ("City"). The City terminated a Department of Public Works employee, who was a Union member. On the worker's behalf, the Union took the matter through the grievance process established by the collective bargaining agreement ("CBA") between it and the City. After some initial intransigence, the parties agreed to a last-chance agreement ("LCA") that reinstated the worker under strict controls. The LCA stated that the worker could be "subject to immediate termination without recourse to the grievance or arbitration provisions of the [CBA]." A year later, the city terminated the worker. The Union again tried take the matter through the CBA grievance process, but the City refused, citing the aforementioned LCA provision.

The Union notified the City of its intent to arbitrate the grievance and filed an application and motion to compel arbitration under R.C. 2711.03 in the court of common pleas. The City filed a motion to dismiss for lack of subject matter jurisdiction, claiming that the State Employment Relations Board ("SERB") had exclusive jurisdiction over claims that depend on a CBA and rights that arise from R.C. Ch. 4117.

The trial court denied the City's motion to dismiss and granted the Union's application and motion to compel arbitration. The City appealed and the Eighth District reversed, holding that SERB had exclusive jurisdiction over the claim because it substantively alleged that the City had interfered with the worker's collective-bargaining rights by refusing to arbitrate the grievance under the CBA.

SERB's jurisdiction is exclusive when the CBA between an employer and union contains a grievance procedure that may culminate with final and binding arbitration. R.C. 4117.10(A). However, when a party refuses to follow the grievance procedure, the opposing party may bring suit in a court of common pleas to force the noncompliant party to adhere to the CBA. R.C. 4117.09(B)(1). The Court was careful to limit its interpretation of R.C. 4117.09, stating "our decision in this case does *not* mean that a party may bring any claim for a violation of a collective-bargaining agreement in a court of common pleas." Indeed, claims under R.C. Ch. 4117 belong exclusively to SERB. To decide whether a claim is within SERB's exclusive jurisdiction, the Court articulated the following test: "whether one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 or whether one of the parties filed a complaint before a common pleas court alleging conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." An attempt to compel arbitration in accordance with a CBA provision makes no allegation that the employer engaged in an unfair labor practice. Thus, it is not within SERB's exclusive jurisdiction.

What is the practical effect of *Ohio Council 8*? It clarifies and somewhat narrows the bounds of SERB's exclusive jurisdiction to cases involving a claim under R.C. Ch. 4117. For the plaintiffs' bar, the case suggests that an injured worker may bring their workplace tort claim against their employer directly in a court of common pleas without worrying about the court dismissing the claim because SERB has exclusive jurisdiction.

Rodriguez v. Cath. Charities Corp., 2025-Ohio-4840 (8th Dist. Oct. 23, 2025).

Disposition: Reversing the jury verdict awarding limited damages for plaintiff and remanding for a new trial.

Topics: Admissibility at trial of consent decree; respondeat superior liability; admissibility of expert testimony; and apportionment of fault to non-parties.

This tragic lawsuit arises out of the abuse (including broken bones) and death (from starvation) of a developmentally disabled minor child who was in the care of Catholic Charities and its social worker, Ms. Caraballo. The child lived with his mother and the mother's boyfriend together with several of the child's half-siblings. When the child died, the mother and her boyfriend did not report the death to the authorities, but buried the child in the backyard, where the body was eventually discovered.

The evidence showed that the social worker, Caraballo, treated her relationship with the child's mother more as a friendship, as opposed to a professional relationship for the child's welfare. Moreover, Caraballo repeatedly falsely reported home visits to the family when none had taken place, did not investigate the home or the child's living quarters, and took the mother's word that the minor was in a safe place. Also, Caraballo frequently purchased food stamps from the child's mother for less than face value. Lengthy prison sentences were issued to the mother, the boyfriend, and Caraballo.

In the wrongful death action by the child's estate against the social worker, Caraballo, and Catholic Charities, a consent judgement and stipulation to certain facts (the "CJE") admitting Caraballo's liability was entered. The child's estate

agreed not to pursue collection of the $36 million judgment entry against Caraballo. After the CJE was entered, the child's estate proceeded with the claims against Catholic Charities. Although the jury returned a verdict for the plaintiff in the amount of $12 million, the trial court reduced it to $740,000 due to apportionment of fault to non-parties and by capping non-economic damages.

On appeal, the child's estate first argued that the trial court improperly excluded from evidence the CJE entered with Caraballo. The Eighth District ruled that the CJE should have been admitted into evidence because it was relevant to the claims against Catholic Charities, and its probative value was not outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury.

During trial, Catholic Charities moved for a directed verdict on the issue of its vicarious liability for Caraballo's conduct, which the trial court granted. Catholic Charities, citing *Nat'l Union Fire Ins. Co. v. Wuerth*, 2009-Ohio-3601, and other authority, argued that because Caraballo had been dismissed from the action, Catholic Charities could no longer be held liable for her conduct. The Eighth District reversed the trial court's decision, reasoning that Caraballo's liability had already been established.

The Eighth District also reversed the trial court's ruling excluding plaintiff's expert testimony on causation on the ground that it was speculative. The appellate court reasoned that the three expert witnesses all expressed their opinions based upon probability, and not mere possibilities, and thus their testimony was not speculative.

The Eighth District in addition reversed several trial court orders allowing for apportionment of liability to non-parties. For example, Catholic Charities listed several physicians and other health care professionals purportedly with MetroHealth Medical Center who, it contended, should have reported the child's condition to the authorities. However, Catholic Charities named these individuals by last name only. The appellate court reasoned: "it would be hard to imagine holding someone referred to as merely 'Dr. Patel' or 'other nurses and social workers' liable." Also, the court reversed the ruling allowing the jury to apportion fault to the county child services agency because there was no evidence of causation offered with respect to the county agency's social workers. The case was remanded for new trial.

Ellis v. Setjo, LLC, 2025-Ohio-4844 (8th Dist. Oct. 23, 2025).

Disposition: Affirming trial court order denying defendant's motion to stay proceedings pending arbitration, and opportunity to file reply brief.

Topics: Arbitration agreement; contract interpretation – meeting of the minds; trial court denial of opportunity to file reply brief under Civ. R. 6(C)(1).

Plaintiff Sharon Ellis was 76 years old when she filed her Complaint seeking, among other things, to have a car purchase agreement voided for fraud in the inducement. She lived in a senior residential facility, and had both limited vision and limited hearing. As it pertains to this lawsuit, she had hired a caretaker, Tansunia Haugabook, to help with Ellis' cleaning, cooking and grocery shopping. Haugabook convinced Ellis to co-sign a note for a new car, which was purchased from a local Kia dealer. Ellis accompanied Haugabook to the dealership to purchase the car.

Unbeknownst to Ellis, she signed paperwork that made her the sole purchaser of the vehicle, and Ellis became liable for the car payments when Haugabook stopped making payments. As part of the vehicle purchase, Ellis also signed two separate arbitration agreements, which attempted to require Ellis to arbitrate any claims she had against the dealership. Ellis admitted to signing several documents at the dealership but did not know she was signing anything related to arbitration.

After Ellis filed her lawsuit, the Kia dealership moved the court to have the civil proceedings stayed pending resolution of the case through arbitration. The trial court granted Ellis an extension of time to respond to the motion to stay, and also denied the dealership the right to file a reply brief on the issue. Ultimately, the trial court denied Kia's motion to stay the proceedings, a ruling which Kia appealed.

The Eighth District first noted that because of the disparity in the bargaining positions of the parties, arbitration clauses are subject to considerable skepticism. Further, the Court described one of the arbitration clauses as a "contract of adhesion," a standardized form drafted by one party to be enforced against another weaker party with no realistic choice as to the contract terms.

The appellate court then described several inconsistencies between the two arbitration clauses, including which arbiter would hear the case, and who would be responsible for certain arbitration costs, experts and attorney fees. The Court also emphasized that one of the arbitration clauses did not provide Ellis with an option to waive the arbitration provision, leaving her only with the choice to either agree to arbitrate, or not purchase the vehicle.

The Eighth District concluded that because of these factors there simply was no meeting of the minds between Ellis and Kia on the arbitration question. The Court thus affirmed the

trial court's order denying Kia's motion to stay the proceedings pending arbitration, and did not reach Ellis' argument that the arbitration provisions were unconscionable.

The Court further upheld the trial court's denial of Kia's right to file a reply brief with respect to its motion to stay the proceedings. In this regard, the Eighth District ruled that any error was harmless, as Kia did not show the outcome would have been different if Kia had been allowed a reply brief. Kia had admitted that Ellis did not raise any new issues in her brief in opposition to the motion to stay.

Cerreta Interiors, LLC v. The New Moon, LLC, 2025-Ohio-4847 (8th Dist. Oct. 23, 2025).

Disposition: Reversing summary judgment.

Topics: Civ.R. 56(C); moving party's initial burden on summary judgment; vicarious liability.

The Plaintiff, New Moon, LLC ("New Moon"), leased commercial property from the Defendant, Cerreta Interiors, LLC ("Cerreta"). During New Moon's lease, Cerreta hired a company, Northeast Ohio HVAC, LLC ("NEO HVAC"), to relocate some duct work in the building. This work required NEO HVAC to cut through a brick wall. Cutting through a brick wall creates brick dust, which sometimes contains a known carcinogen called crystalline silica. NEO HVAC allegedly failed to take measures to prevent the spread of brick dust throughout New Moon's facilities. As a result, dust caked New Moon's inventory and retail space. After Cerreta allegedly failed to provide adequate clean-up measures, New Moon closed shop.

New Moon filed suit against both parties. Against Cerreta, New Moon claimed breach of lease agreement, breach of landlord duties and responsibilities, negligence, declaratory and injunctive relief, negligent misrepresentation, fraudulent concealment, and constructive eviction. Against NEO HVAC, New Moon claimed negligence, breach of implied warranties, and nuisance. As part of its investigation, New Moon secured an expert who determined that the brick dust in their shop contained dangerous levels of crystalline silica.

After some additional discovery, both defendants filed motions for summary judgment. Cerreta claimed only that it could not be liable for NEO HVAC's negligence under the principles of vicarious liability. It did not address New Moon's other claims. NEO HVAC claimed that New Moon could not prove the existence of crystalline silica, that there was no privity of contract for the purposes of New Moon's implied warranty claim, and that nuisance was not the proper cause of action because a dust cloud is a real and tangible invasion of real property fit for a traditional trespass claim. NEO HVAC's motion was partially predicated on an unauthenticated letter from the Bureau of Workers' Compensation Division of Safety and Hygiene stating that the "respirable dust" in New Moon's shop was within safety guidelines. NEO HVAC offered no argument regarding the letter's admissibility.

The court of appeals reversed as to both summary judgment motions.

Since Cerreta's motion only raised a single argument – that it could not be liable for the torts of an independent contractor – and since that argument was not relevant to *all* claims alleged in the complaint, the motion was, at best, a motion for partial summary judgment. Even then, the motion was not properly granted. The independent contractor analysis "is fact-intensive" and involves numerous factors, none of which, alone, is dispositive. *Id*. at ¶11. Here, however, Cerreta did not satisfy its initial summary judgment burden, as it presented no evidence in support of this issue, but simply made the conclusory statement that "'[i]n this case there is simply no record evidence Cerreta is liable for work performed by independent contractors; namely, Co-defendants NEO HVAC who allegedly caused this silica dust at dangerous levels." *Id*. And "[s]imply arguing that the plaintiff lacks evidence does not satisfy the moving party's burden under Civ. R. 56." *Id*. at ¶12.

As to NEO HVAC's motion, the Eight District found it "equally unavailing." New Moon provided an expert opinion that the brick dust on the ground contained dangerous carcinogen levels and, if it were kicked up, the air too would become dangerous. NEO HVAC based its motion on an inadmissible letter stating that the airborne carcinogen levels were within the acceptable range. However, "NEO HVAC identified nothing in the record establishing the fact that the hazardous material must be airborne to be actionable." Even if the court considered NEO HVAC's inadmissible letter, "New Moon's expert's opinion, standing alone, create[d] a trial issue of fact" on whether exposure to the layer of dangerous dust covering the store caused injury. NEO HVAC's motion failed to establish an absence of a genuine issue of material fact on that issue. Thus, the trial court erred by granting their summary judgment motion.

Soler v. Cleveland Metro., 2025-Ohio-2151 (8th Dist. June 18, 2025).

Disposition: Reversing trial court's denial of defendant's Motion to Dismiss.

Topics: Municipal School District non-liability for student suicide; political subdivision immunity pursuant to R.C. 2744.02(B)(4).

This cause of action arose out of the tragic death by suicide of plaintiff's 11 year old son, a student at the Cleveland Metropolitan School District (CMSD). The plaintiff alleged that CMSD had given his son a "digital device" that allowed the son to watch obscene videos and other material harmful to minors, which caused the suicide. The plaintiff further alleged that CMSD's internet monitoring safety policies and filtering software were defective in not excluding the harmful and obscene videos.

Plaintiff's Complaint stated actions for wrongful death and survivorship, further alleging CMSD's willful, wanton and reckless conduct. CMSD filed a Motion to Dismiss pursuant to Civ. R. 12(B)(6), arguing that it had political subdivision immunity, and none of the exceptions to immunity applied. CMSD also argued that CMSD's conduct was not the proximate cause of the child's death. Plaintiff responded that questions of fact existed as to whether the failures of the computer filters to protect students from online harm was a "physical defect" within the meaning of R.C. 2744.02(B)(4).

The trial court denied CMSD's Motion to Dismiss, reasoning that the pleadings do not conclusively establish the affirmative defense of political subdivision immunity, and that the plaintiff need not establish proximate cause at the pleading stage.

In CMSD's appeal from the trial court's ruling, plaintiff argued again that R.C. 2744.02(B)(4)'s exception to immunity applied. That provision states, in short, that political subdivisions such as CMSD are liable for negligence by their employees that 1) is due to physical defects within or on the grounds of government buildings; and 2) occurs on the grounds of those government buildings.

The plaintiff contended that the "filtering software" did not act as was intended and thus constituted a "physical defect." The Eighth District disagreed. Plaintiff did not allege in his complaint that there was a physical defect in the filtering software; in fact, the complaint conceded that the filters on the child's district issued device had not been removed, damaged or altered by any party. The Court stated: "While appellee now claims that the filtering software was defective, he did not plead so in his complaint." Further, the Court held that CMSD's alleged misuse or failure to monitor filtering software did not constitute a defect under R.C. 2744.02(B)(4).

The Court further held that R.C. 2744.02(B)(4) did not apply because plaintiff did not allege in his complaint that the injury occurred on school grounds, and in fact there was no dispute that the death occurred at home.

Thus, the Eighth District found CMSD was immune from plaintiffs' suit, and it reversed the trial court's decision denying CMSD's Motion to Dismiss.

Wood v. Kroger Co., 2025-Ohio-1385 (1st Dist. April 18, 2025).

Disposition: Reversing trial court ruling which had granted summary judgment for premises owner.

Topics: Premises liability; The "no duty winter rule," and its exceptions.

The plaintiff slipped and fell on ice on the pavement of defendant Kroger's gas station. The ice was alleged to be located directly under a hole in the canopy above the gas pump. There was conflicting evidence as to the defendant's knowledge of this patch of ice, with a store employee contending that she informed the manager of the hole and ice, but the store manager denied the same.

The trial court granted Kroger's motion for summary judgment, concluding that there was no evidence that the ice was the result of an "unnatural accumulation," and that Kroger had neither actual nor constructive notice of the ice or of any defect in the canopy roof.

On appeal, the Court set forth the general "no duty winter rule" which holds that premises owners have neither the duty to warn business invitees of the dangers associated with natural accumulations of winter precipitation, nor the duty to remove such precipitation from the private pathway of the premises. The rationale for this rule is that invitees should appreciate the dangers of snow and ice and take action to protect themselves accordingly.

The Court then spelled out the two exceptions to the no duty winter rule: (1) where the business owner is negligent in permitting or creating an unnatural accumulation of winter precipitation; and (2) where the business owner has actual or implied knowledge that an accumulation of ice or snow on the property has created a condition substantially more dangerous than a business invitee should anticipate.

Regarding the "unnatural accumulation" exception to the no duty winter rule, the plaintiff argued that the ice was created by a leak in the roof canopy rather than by a natural source, and that the defendant was placed on notice of this problem by the store employee. The Appellate Court noted that although the defendant contended that it had no notice of the hole in

the canopy, the defendant did not dispute the existence of the hole. Thus, the Court held that there was conflicting evidence of Kroger's notice of the hole (via the conflict between the testimony of the store employee and the store manager), making summary judgment improper.

Additionally, the Court held that the existence of the hole in the canopy and ice below the hole did not require expert testimony, as an average lay person could understand this condition from ordinary firsthand experience. The Court thus distinguished this case from one where water was being impeded by the faulty design of a rainwater drainage system, where an expert is needed.

Regarding the "substantially more dangerous" exception to the no duty winter rule, the plaintiff argued that photographic evidence showed other patrons walking in the area seemingly unaware of the ice. Again, given the conflicting evidence regarding the defendant's superior knowledge of the existence of the ice, the Court found that this created a jury question, as well. Thus, the trial court's ruling in favor of Kroger was reversed. ■

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.

Michael J. Factor is an associate at Flowers & Grube. He can be reached at 216.344.9393 or mjf@pwfco.com.

CATA VERDICTS AND SETTLEMENTS

Case Caption: _____

Type of Case: _____

Verdict: _____ **Settlement:** _____

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

Counsel for Defendant(s): _____

Court / Judge / Case No: _____

Date of Settlement / Verdict: _____

Insurance Company: _____

Damages: _____

Brief Summary of the Case:

Experts for Plaintiff(s): _____
_____
_____

Experts for Defendant(s): _____
_____
_____

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

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CATA Verdicts & Settlements

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

CONFIDENTIAL

Type of Case: Premises liability
Settlement: $14 Million
Plaintiff's Counsel: Jeffrey M. Heller, Esq., Nurenberg, Paris, Heller & McCarthy Co, LPA, 1200 Superior Avenue, Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendant's Counsel: Confidential
Court: Confidential
Date Of Settlement: October 2025
Insurance Company: Confidential
Damages: Traumatic brain injury

Summary: Plaintiff riding an electric scooter 20 mph on a sidewalk hit a roughly 2" deviation causing him to rotate 180-degrees and hit the rear of his head on the sidewalk. He was not helmeted.

Plaintiff's Experts: CONFIDENTIAL. Specialties were biomechanics, accident reconstruction, concrete restoration, PM&R, neuropsychology, vocational rehabilitation, life care planning and economics.
Defendant's Expert: CONFIDENTIAL, but same specialties as plaintiff's experts with three defendants.

Cortney Kula, Individually and as Administrator of the Estate of Christine Ann Kula, Deceased v. OMNI Manor Health Care Center, aka Windsor House at OMNI Manor, et al.

Type of Case: Nursing Home Negligence, Wrongful Death
Settlement: $5,000,000.00
Plaintiff's Counsel: Romney B. Cullers, David W. Skall, The Becker Law Firm, L.P.A., (216) 621-3000; and Francis E. Sweeney, Jr., Francis E. Sweeney, Jr., Esq., LLC, (440) 446-1200
Defendants' Counsel: Marshall Buck
Court: Mahoning County Common Pleas Court, Judge Anthony M. D'Apolito
Date Of Settlement: September 29, 2025
Insurance Company: Self-Insured
Damages: Death

Summary: A severely disabled 54-year old mother of two adult children who was a resident in a nursing care facility choked to death on food. She had several conditions that increased her choking risk, including multiple sclerosis, dementia, early-onset Alzheimer's, a recent stroke, poor dentition and long-standing dysphagia. She required supervision and verbal cueing while eating. On the day of her death, an aide dropped off a lunch tray in her room and left her alone while she attempted to eat a pork chop. She was found non-responsive about 30 minutes later. The challenge in the case was establishing the value of her daughters' loss of relationship, given her poor quality of life and reduced life expectancy.

Plaintiff's Experts: Richard M. Dupee, M.D. (Geriatrician); and David Dolinak, M.D. (Forensic Pathologist)
Defendants' Expert: Monica Ott, M.D. (Internist)

Baby Doe v. ABC Hospital

Type of Case: Medical Negligence
Settlement: $10.1 Million
Plaintiff's Counsel: Romney B. Cullers, The Becker Law Firm, L.P.A., (216) 621-3000
Defendant's Counsel: Withheld
Court: Withheld
Date Of Settlement: September 15, 2025
Insurance Company: Withheld
Damages: Neonatal brain injury, spastic quadriplegia, partial blindness

Summary: A ten-day-old baby in respiratory distress was taken by parents to the emergency department of a community hospital. The child was immediately transferred to a higher level of care. Emergency physicians at the second hospital failed to consider a cardiac etiology and assumed that the child had a community-acquired viral illness. In fact, the child had an acyanotic ductal dependent congenital heart lesion that had not been discovered at the time of birth, and by the time of presentation at the second emergency department, had rapidly progressed to heart failure. While awaiting various test results at the second hospital, the child suffered a cardiac arrest. During resuscitation attempts, the wrong sized endotracheal tube was selected, which resulted in 3 failed intubations. Ultimately the child was resuscitated but did not have return of spontaneous circulation for 23 minutes. The appropriate treatment was to assume cardiac etiology until proven otherwise based on the symptoms at presentation and administer prostaglandins empirically, pending confirmation of a heart defect. Prostaglandin therapy would have slowed the rapid progression of heart failure. The challenge in the case was proving that immediate suspicion of a cardiac cause and

institution of prostaglandins would have prevented the arrest. There was a very short causation window, approximately 30 minutes from the time of arrival to the point where starting prostaglandins would have made a difference. The child is now severely neurologically impaired.

Plaintiff's Expert: Withheld
Defendant's Expert: Withheld

Carol S. Maag, et al. v. Ford Motor Co., et al.

Type of Case: Product Liability
Settlement: Confidential
Plaintiffs' Counsel: James A. Lowe, Kyle B. Melling, and Mark C. Willis, Lowe Trial Lawyers, (216) 781-2600
Defendant's Counsel: Elizabeth B. Wright, Conor A. McLaughlin, Zion U. Savory, and Craig Pelini, et al.
Court: Cuyahoga County Common Pleas Court Case No. CV 23-987892, Judge John O'Donnell
Date Of Settlement: September 4, 2025
Insurance Company: N/A
Damages: Severely fractured pelvis, lower spine and related areas with life flight, surgery, etc.

Summary: Carol Maag backed out of her garage, placed the rotary gearshift knob in Park, exited her 2020 Ford Edge with the engine running while she met with a FedEx driver and walked toward the garage to replace a trash can. After about two minutes, the vehicle rolled forward, striking Carol from behind and pinning her to the garage door frame before throwing her onto the garage floor. Ultimately, a defective wiring harness was removed from the vehicle.

Plaintiffs' Experts: Kurtis Whitling (Krucial Engineering); and Alexander Minard, M.D.
Defendants' Experts: Matthew Fyie; Eldon Leaphart; Jarrod Carter; and Nathan Dorris

Baby Boy Doe, et al. v. ABC Hospital

Type of Case: Medical Negligence
Settlement: $6,500,000
Plaintiffs' Counsel: John Lancione, The Lancione Law Firm, (440) 331-6100
Defendant's Counsel: Confidential
Court: Confidential
Date Of Settlement: September 2025
Insurance Company: Self Insured
Damages: Spastic Quadriplegic Cerebral Palsy

Summary: Mom was admitted to hospital for trial of labor after cesarean section (TOLAC) with the hope of achieving a vaginal birth after cesarean section (VBAC). Early in the morning of the second day there was the sudden onset of a concerning fetal heart rate pattern with recurrent late, variable and prolonged decelerations and minimal variability. The fourth year OB/GYN resident ordered amnioinfusion and the nurse initiated that order. The fetal heart rate pattern worsened so the resident instructed the mom to start pushing. After 20 minutes of pushing a terminal fetal bradycardia occurred and the attending OB was finally called for an emergency C-section. Baby Boy Doe was born with zero Apgars through 15 minutes and profound metabolic acidosis reflected in his umbilical cord blood gases. He was diagnosed with moderate cerebral palsy. Plaintiff alleged emergency delivery should have occurred within 15 minutes of the onset of the concerning fetal heart rate pattern.

Plaintiffs' Experts: Mark Landon, M.D.; Andrew Bokor, M.D.; Heidi Shinn, RN; Terrie Inder, M.D.; Arum Pollock, M.D.; Kristin Taylor, M.D.; Thomas Sullivan, Ph.D.; Michael McCord, MS; and David Boyd, Ph.D.
Defendant's Experts: David Miller, M.D.; Suneet Chauhan, M.D.; Michael Tiffany, M.D.; Jay Goldsmith, M.D.; and Christopher Keenan, M.D.

CONFIDENTIAL

Type of Case: Dram shop
Settlement: $6 Million
Plaintiff's Counsel: Jeffrey M. Heller, Esq., Nurenberg, Paris, Heller & McCarthy Co, LPA, 1200 Superior Avenue, Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendant's Counsel: Confidential
Court: Confidential
Date Of Settlement: September 2025
Insurance Company: Confidential
Damages: Partial paralysis

Summary: Plaintiff sitting at a red light at night on a motorcycle. Defendant, driving with BAC of .17, rear-ended plaintiff causing lower extremity paralysis. Body camera footage indicated defendant may have been coming from a bar, which was heavily disputed by corporate defendant, as was every aspect of defendant's testimony he provided while in prison. Key testimony was corroborated via forensic analysis of defendants' POS system.

Plaintiff's Experts: CONFIDENTIAL. Specialties were toxicology, liquor liability, electronic forensics, neurosurgery, life care planning and economics.
Defendants' Experts: CONFIDENTIAL, but same specialties as plaintiff's experts.

Kimberly McCarthy, etc. v. OSU Wexner Medical Center

Type of Case: Medical Malpractice
Settlement: $3.75 Million
Plaintiff's Counsel: Jonathan D. Mester, Esq., Nurenberg, Paris, Heller & McCarthy Co, LPA, 1200 Superior Avenue, Suite 1200, Cleveland, OH 44114, (216) 695-5225
Defendant's Counsel: *
Court: Court of Claims of Ohio
Date Of Settlement: September 2025
Insurance Company: *
Damages: Brain Injury

Summary: Plaintiff was diagnosed with a metastatic thymoma with metastasis to her liver. She underwent chemotherapy to shrink the tumor, followed by surgery. Because of how friable the tumor was, severe complications occurred during liver surgery, resulting in severely high ammonia levels and severe brain injury. We contended that the metastasis to the liver should have been identified 18 months earlier based on imaging results, and that had that occurred, chemotherapy would not have been needed, and the complication would not have occurred.

Plaintiffs' Experts: Anthony DiCarlo, M.D. (Liver Surgeon); Guy Rordorf, M.D. (Neurologist); David Fried, M.D. (Internal Medicine); Cynthia Wilhelm, Ph.D. (Life Care Planner); and David Boyd, Ph.D. (Economist)
Defendant's Expert: *

Pamela Huff, et al. v. Millennia Housing Management LTD, et al.

Type of Case: Personal Injury, Wrongful Death
Settlement: $90,000
Plaintiffs' Counsel: Isaac Tom Monah, Monah Law Offices, Inc., (216) 501-9119
Defendants' Counsel: Matthew Perry
Court: Mahoning County Common Pleas Court Case No. 2024CV00403, Judge Anthony Donofrio
Date Of Settlement: August 26, 2025
Insurance Company: James River Insurance Company
Damages: $90,000

Summary: Pamela Huff ("Ms. Huff") died from a cardiopulmonary arrest when the spare keys to her apartment, used by the Youngstown Fire Department, failed to immediately unlock the door so that EMS could render aid. On September 28, 2023, Ms. Huff called emergency services because she was suffering from shortness of breath. When EMS arrived on the scene, Ms. Huff was still able to speak with EMS, but her difficulty breathing prevented her from getting to the door. The door was locked, and Ms. Huff was unable to unlock it due to her medical emergency. EMS was ready to render life-saving aid to Ms. Huff. The Fire Department attempted to unlock Ms. Huff's door with the spare keys, intended for emergency access and located in the Knox Box. However, they were unable to open the door. The spare keys did not even fit in the lock. Eventually, the Fire Department broke down the door to Ms. Huff's apartment. The EMS paramedics found Ms. Huff sitting on her couch with no pulse and not breathing, according to their report. EMS attempted to resuscitate Ms. Huff for thirty (30) minutes but were unsuccessful. They declared her deceased due to cardiopulmonary arrest. As a result of these events, Kevin Huff, the decedent's only surviving child, sued the Defendants for wrongful death, negligence, negligence per se, a survival action, vicarious liability, negligent hiring, retention, supervision, and failure to train, loss of consortium, and punitive damages.

Plaintiffs' Expert: None
Defendants' Expert: None

Baby Doe v. ABC Hospital & Obstetrician

Type of Case: Medical Negligence
Settlement: $1.35 Million
Plaintiff's Counsel: David W. Skall, The Becker Law Firm, L.P.A., (216) 621-3000
Defendants' Counsel: Withheld
Court: Withheld
Date Of Settlement: August 1, 2025
Insurance Company: Withheld
Damages: Severe newborn head trauma, brain injury, and partial disability

Summary: This birth injury lawsuit against a central Ohio obstetrician and hospital involved alleged gross misuse of a vacuum extractor during delivery of a 34-week, preterm baby boy. The misuse caused severe caput, subgaleal and subarachnoid brain bleeding, and multiple skull fractures during labor. Discovery unmasked that the obstetrician had never used the type of vacuum extractor that the hospital provided to her during the delivery. Nonetheless, she placed the unfamiliar piece of equipment and applied traction many times despite that the baby's head was in an improper position and too high in the maternal pelvis such that great traction and force would be needed to complete delivery. This mistaken use then continued until the physician had applied the vacuum and placed traction as many as 7 times, wherein it "popped off" the baby's head due to excessive force and loss of suction on at least 3+ occasions. After efforts to use the vacuum failed, the delivery had to be completed via cesarean section. But by

then it was unfortunately too late, as the baby's head had been badly injured and the boy, now 8 years old, ultimately suffered permanent and partially disabling brain damage. The primary causation defense was that the child at age 2 developed an unrelated, congenital Chiari I malformation in his brain that was the actual cause of his developmental delays and impairment.

Plaintiff's Expert: Withheld
Defendants' Expert: Withheld

Jane Doe v. Jane Doe

Type of Case: Motor Vehicle Collision
Settlement: $305,000.00
Plaintiff's Counsel: Mohammad S. Abdallah, CEO Lawyer Personal Injury Firm, (833) 254-2923
Defendant's Counsel: N/A
Court: N/A - Pre-Suit
Date Of Settlement: July 18, 2025
Insurance Company: USAA
Damages: $163,000+

Summary: Client involved in severe T-bone car crash in Shelby County. Client suffered compound fracture in her right ankle and a fracture in her left wrist. Client underwent surgery to repair her right ankle. USAA tendered the full policy limits pre-suit. Farmers tacked on an additional $5k in MedPay and waived subrogation.

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

Confidential

Type of Case: Dog bite resulting in Complex Regional Pain Syndrome
Settlement: $945,000
Plaintiff's Counsel: Bob Rutter and Bobby Rutter, Rutter and Rutter, LLC, (216) 642-1425
Defendant's Counsel: Confidential
Court: Summit County Common Pleas Court
Date Of Settlement: June 19, 2025
Insurance Company: State Farm
Damages: Permanent inability to use right hand; constant pain; depression

Summary: A 37-year old father of four was bitten by his aunt's dog. He treated at CCF and developed CRPS, a progressive nerve condition that affected his right dominant hand and arm and spread to his right foot.

Plaintiff's Experts: Dr. Adam Carinci (CRPS); Dr. Jianguo Cheng (CCF); Dr. Rick Wickstrom (Functional Capacity); John Pullman (Vocational Rehab); Pam Hanigosky (Future Medical Needs And Costs); and Sean Saari (Economist)
Defendant's Expert: *

Jane Doe v. ABC Restaurant

Type of Case: Premises Liability
Settlement: $550,000.00
Plaintiff's Counsel: Jordan D. Lebovitz, Esq. and Kyra E. Wieber, Esq., Nurenberg, Paris, Heller & McCarthy Co, LPA, 1200 Superior Avenue, Suite 1200, Cleveland, OH 44114, (216) 621-2300
Defendant's Counsel: *
Court: Cuyahoga County
Date Of Settlement: May 2025
Insurance Company: *
Damages: *

Summary: Plaintiff was a patron at a restaurant when a damaged partition suddenly fell on her, causing severe injuries to her back and knee.

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

Gary Ryan, Executor of the Estate of Mary Ryan v. Fairview Hospital, et al.

Type of Case: Medical Malpractice, Wrongful Death
Settlement: $7,000,000.00
Plaintiff's Counsel: Kristin Roberts and Charles Kampinski, Kampinski & Roberts, (440) 597-4430
Defendants' Counsel: Stephen Walters, Danny Egger, Donald Switzer, and Bret Perry
Court: Cuyahoga County Common Pleas Case No. CV-24-100926, Judge Mollie Murphy
Date Of Settlement: April 18, 2025
Insurance Company: *
Damages: Wrongful Death

Summary: 84-year old Mary Ryan was admitted to Cleveland Clinic Fairview for surgery to repair a hernia and reversal of a temporary colostomy. The surgery went well but the next day she experienced respiratory distress and was transferred to the intensive care unit for monitoring. It is common for older patients to have respiratory issues for a period of time after anesthesia, and they must be appropriately monitored until these effects wear off so that any necessary interventions can be undertaken. Mrs. Ryan improved over the next two days and was transferred to a regular medical surgical floor. Her pulmonologist ordered that her vitals be checked at least every four hours and for her to be kept on continuous pulse oximetry monitoring to ensure that she maintained adequate

oxygen levels. Over the next two days, healthcare providers failed to consistently check Mary Ryan's vitals per the orders from her pulmonologist. The second night Mary Ryan was in the step-down unit, her pulse oximetry monitor started to alarm due to low oxygen saturations. As the night went on, the alarms became more frequent, and this continued into the early morning hours. In response to these alarms, the night nurse assigned to Mary Ryan silenced the alarms without taking any action to correct the problem or alerting any healthcare providers. At approximately 6:30 in the morning, Mary Ryan was found unresponsive and she was unable to be resuscitated. During discovery, it was revealed that thousands of alarms were triggered, silenced, and ignored by multiple care givers and staff at the hospital who were responsible for responding to these alerts.

Plaintiff's Expert: *
Defendants' Expert: *

Baby Boy Doe, et al. v. ABC Hospital, et al.

Type of Case: Medical Negligence
Settlement: $5,500,000
Plaintiffs' Counsel: John A. Lancione, The Lancione Law Firm, (440) 331-6100
Defendants' Counsel: Confidential
Court: Confidential
Date Of Settlement: March 2025
Insurance Company: Confidential
Damages: Cerebral Palsy, Severe Physical and Cognitive Impairment

Summary: Jane Doe was admitted to ABC Hospital for induction of labor by Dr. Jones. She was under the care of labor nurses who continued to increase the Pitocin, despite uterine tachysystole and uterine hypertonus. Upon commencement of the second stage of labor the fetal tracing began to deteriorate and became severely non-reassuring. The nurses instructed Jane to continue to push. Dr. Jones finally came to the bedside at the same time baby boy Doe delivered vaginally. He was severely depressed and acidotic. He was diagnosed with severe HIE and ultimately cerebral palsy.

Plaintiffs' Experts: Dennis McWeeney, M.D. (OB/GYN); Terrie Inder, M.D. (Neonatology); and Gordon Sze, M.D. (Radiology)
Defendants' Experts: Harry Farb, M.D. (OB/GYN); Frank Manning, M.D. (OB/GYN); Dwight Rouse, M.D. (OB/GYN); Elias Chalhub, M.D. (Pediatric Neurology); Mark Scher, M.D. (Pediatric Neurology); Jay Goldsmith, M.D. (Neonatology); Richard Towbin, M.D. (Radiology); and Luke Linscott, M.D. (Radiology)

John Doe, Administrator v. ABC Hospital, et al.

Type of Case: Medical Negligence / Wrongful Death
Settlement: $4,350,500
Plaintiff's Counsel: John A. Lancione, The Lancione Law Firm, (440) 331-6100
Defendants' Counsel: Confidential
Court: Confidential
Date Of Settlement: March 2025
Insurance Company: Confidential
Damages: Death of twin male fetuses

Summary: Jane Doe, who was pregnant with twins, presented to ABC Hospital at 33 weeks gestation with a chief complaint of contractions. She was admitted to the labor unit for observation and was under the care of labor nurses and OB/GYN residents. Jane's uterine tachysystole contraction pattern, firm uterus and tachycardia all pointed to impending or evolving placental abruption or uterine rupture. Dr. Jones ordered a non-emergent cesarean section. Prior to the start of surgery, both fetuses became bradycardic. Both fetuses were born profoundly depressed and acidotic and were diagnosed with severe HIE. Both baby boys passed away several months later.

Plaintiff's Experts: Andy Bokor, M.D. (OB/GYN); Terrie Gorman, M.D. (Neonatology); and Carl Johnson, M.D. (Radiology)
Defendants' Experts: Alan Bedrick, M.D. (OB/GYN); Jay Goldsmith, M.D. (Neonatology); and Carolyn Salafia, M.D. (Pathology)

E/O Debra Slutz

Type of Case: Medical Malpractice
Settlement: $2,000,000
Plaintiff's Counsel: Todd Gurney and Brian Eisen, The Eisen Law Firm, (216) 687-0900
Defendant's Counsel: *
Court: *
Date Of Settlement: February 2025
Insurance Company: *
Damages: Wrongful Death

Summary: 72-year old woman was admitted to the hospital on a regular nursing floor for pain management following a motor vehicle collision (that she caused). She was prescribed several narcotic pain medications, but nursing staff failed to appropriately monitor and recognize signs of respiratory depression. As a result, the woman suffered a respiratory arrest and died in the hospital. She was retired and divorced, but survived by two adult sons.

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

Mary Roe, Administrator v. ABC Hospital, et al.

Type of Case: Medical Negligence / Wrongful Death
Settlement: $1,487,500
Plaintiff's Counsel: John A. Lancione, The Lancione Law Firm, (440) 331-6100
Defendants' Counsel: Confidential
Court: Confidential
Date Of Settlement: August 2024
Insurance Company: Confidential
Damages: Death of a full term fetus

Summary: Mary Roe was admitted to ABC Hospital at 39 weeks gestation for induction of labor by Dr. Jones. Labor nurses and OB/GYN residents managed the labor induction. As the labor progressed the fetal monitor tracing became non-reassuring. When Dr. Jones finally arrived on the unit the FHR tracing was a Category III. Despite the need for an emergent cesarean section, Dr. Jones ordered a non-emergent C-section for failure to progress. An hour later, baby boy Roe was born deceased.

Plaintiff's Experts: Dr. Paige Halvorson, M.D. (OB/GYN); and Terrie Gorman, M.D. (Neonatology)
Defendants' Experts: Suneet Chauhan, M.D. (OB/GYN); Wayne Trout, M.D. (OB/GYN); and Julie Levitt, M.D. (OB/GYN)

Jane Doe, Administrator v. ABC Hospital, et al.

Type of Case: Medical Negligence / Wrongful Death
Settlement: $1,478,500
Plaintiff's Counsel: John A. Lancione, The Lancione Law Firm, (440) 331-6100
Defendants' Counsel: Confidential
Court: Confidential
Date Of Settlement: April 2024
Insurance Company: Confidential
Damages: Death of a full term fetus

Summary: Jane Doe was admitted to the hospital for induction of labor at 39 weeks of gestation by Dr. Jones. Labor nurses and OB/GYN residents managed the labor induction. As the labor progressed the fetal monitor tracing became non-reassuring. Despite this, the resident continued to increase the Pitocin. Eventually, a fetal heart rate bradycardia ensued. An emergency cesarean section was performed. The baby was profoundly depressed and had severe metabolic acidosis. In the NICU the baby was diagnosed with severe neurologic devastation. On advice of the physicians, the parents allowed life support to be withdrawn. The baby passed away peacefully.

Plaintiff's Experts: Dr. Paige Halvorson, M.D. (OB/GYN); Terrie Gorman, M.D. (Neonatology); and Anna McDonald, M.D. (Pathology)
Defendants' Experts: Dwight Rouse, M.D. (OB/GYN); Paige Partridge, M.D. (OB/GYN); and David Schwartz, M.D. (Pathology)

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

CATA Membership Dues

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

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

[FOR INTERNAL USE]

President's Approval: _____ Date: _____

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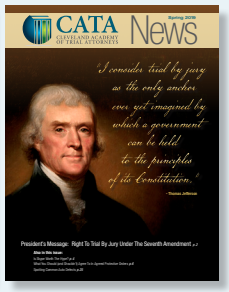

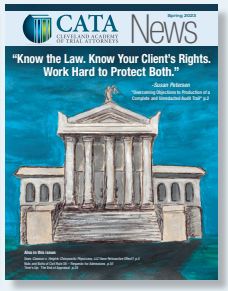

CATA 600 Superior Ave., E., Suite 1200, Cleveland, Ohio 44114-2654

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