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APRIL, 1995 NEWSLETTER

EDITOR: RICHARD C. ALKIRE, ESQ.

PRESIDENT'S COLUMN

ROBERT E. MATYJASIK, ESQ.

The next couple of months will be busy, so mark your calendars for these important upcoming events:

May 3-5 **OATL CONVENTION, Columbus.** CATA is well represented in the cadre of excellent speakers - Bob Rutter, Mike Kube, Tom DeChant, Ellen Simon Sachs, Jeff Friedman, Fred Weisman, Shelly Braverman, Laurie Starr, Andy Krembs, Donna Taylor-Kolis, Paul Kaufman, Peter Weinberger, Mike Monteleone, Rick Alkire, James Lowe, Dave Forrest, Jack Liber, Don Iler and Tom Henretta - to mention a few. Call OATL [800-334-2471; (614) 341-6800] if you need a reservation form.

June 2 **CATA ANNUAL INSTALLATION DINNER, Cleveland.** This year's banquet will be held at the Ritz Carlton Hotel. Invitations will be mailed in the next few days. Please remember to invite a judge (& spouse) as your guests. Call Dave Goldense (241-0300) if you need the name of a judge who has not been invited.

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EXPERT/BRIEF BANK: A copy of a new submission form is enclosed. In order to assure proper indexing of materials, no submissions will be accepted without a completed form. We will soon publish a new and improved index to make the exchange bank more user friendly. Materials in the bank remain available to CATA members on the same basis of **two deposits** for **each withdrawal.**

Special thanks to CATA officers Rick Alkire and Dave Goldense, trustees Ann Garson and Skip Sweeney, and members Joe Burke, Jim Casey, Romney Cullers, Mark Ruf and Dan Sucher for countless hours of tedious work in reorganizing our ever-expanding exchange bank.

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S.B. 20 UPDATE: The anti-Savoie act became effective October 20, 1994. Most courts that have considered the issue have ruled that S.B 20 is **not retroactive.** See, Thomas v. Nationwide Mut. Ins. Co. (12-7-94), Franklin C.P. #94 CVC 07-5076, unrep.; Park v. State Automobile Mut. Ins. Co. (1-4-95), Montgomery C.P. #94-1564, unrep.; Intagliata v. Lightning Rod Mut. Ins. Co. (1-3-95), Lucas C.P. #CI 91-2250, unrep.; Brown v. The Ohio Cas. Group (2-9-95), Franklin C.P. #94 CVH 10-7332, unrep.; Spriggs v. Liahtnina Rod Mut. Ins. Co. (2-1-95), Scioto App. #93 CA 2203, unrep. (the Sup. Ct. accepted Spriggs on 2-15-95); Siamon v. Hatfield (3-6-95), Clermont App. #CA 94-07-054, unrep.

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Conaratulations to CATA member John G. Lancione upon his election as Secretary-Treasurer of the International Society of Barristers; and member John D. Liber, recently elected to the Board of Governors of the Society.

* * * * *

Special thanks to Dave Goldense. his committee Frank Bolmeyer, George Loucas and John Miraldi, and presenters Ben Barrett, Bob Linton, Ellen Hirshman, and to Judge Robert Lawther for all their work on the 1995 **BERNARD FRIEDMAN LXTIGATION INSTITUTE.** It was one of the best trial seminars I've ever attended.

Sincerely,

Robert E. Matyjasik

SUMMARIES OF RECENT DECISIONS BY THE
EIGHTH DISTRICT
COURT OF APPEALS, CUYAHOGA COUNTY

EMPLOYER INTENTIONAL TORT - QUESTION OF FACT

Cook v. Cleveland Electric Illuminating Co., Case No. 67264 (Cuyahoga Cty., March 30, 1995). For Plaintiff: Richard C. Alkire, Joel Levin, Sandra J. Rosenthal and For Defendant: William F. Scully, Jr. Opinion by: Donald C. Nugent. Sara J. Harper and Terrence ODonnell concur.

Mr. Cook was seriously injured on July 2, 1991 in the course of his employment while he was attempting to transfer power to the asphalt plant from the on-the-premises generator power to CEI power. In attempting to do so he failed to completely throw the off switch associated with the generator power which allowed both sources of power to come together at a 100 amp bypass switch. The trial court agreed with the defendant that plaintiff failed to demonstrate through deposition testimony and affidavits genuine issues of material fact under the three elements of an employer intentional tort claim as set forth in Fyffe v. Jeno's. Inc., 59 Ohio St. 3d 115 (1991). The Court of Appeals reversed the trial court indicating that it was not necessary that there be prior accidents to demonstrate substantial certainty of injury under one of the prongs of the Fyffe test. Further, there was ample evidence in the record which established the employer's knowledge of the dangerous condition and knowledge that injury was substantially certain to occur.

LIABILITY INSURANCE - INTENTIONAL TORT

Beacon Insurance Co. of America v. Kleoudis, Case Nos. 66690 and 66731 (Cuyahoga Cty., March f6, 1995). For Plaintiff: Murray K. Lenson, Lynda M. Quick and For Defendant: Peter J. Krembs, Jay H. Salamon. Opinion by: James D. Sweeney. Sara J. Harper and Joseph J. Nahra concur.

The court held that a stop gap policy had application to an intentional tort claim brought by an employee against its employer which had obtained the stop gap coverage. Even though the insurance policy contained an exclusion which exclude coverage for an injury "sustained because of an act committed intentionally by or at the direction of you or any of your executive officers.." The finder of fact could determine that the resulting injuries were accidental and therefore not "expected or intended." Physicians Ins. Co. of Ohio v. Swanson, 58 Ohio St. 3d 189 (1991) states the rule that coverage may be avoided on the basis of an exclusion for expected or intentional injuries. "...The insurer must demonstrate that the injury itself was expected or intended."

MEDICAL MALPRACTICE - NEW TRIAL

Heise v. Orra, Case No. 66172 (Cuyahoga Cty., February 23, 1995). For Plaintiff: Thomas Mester, Harlan M. Gordon, Joel Levin and For Defendant: William D. Bonezzi, Martin J. Fallon, Douglas G. Leak. Opinion by: Dyke. Blackmon and ODonnell concur.

The court reversed the jury verdict against the plaintiff and remanded the case for a new trial. The trial court had refused to grant a motion for new trial afler a defense verdict, which motion was based, in part, upon the defendant doctors' admissions that they deviated from the standard of care. The court went on to find that the record did not support a finding of supervening intervening cause as alleged by the defendants. All subsequent acts were neither new nor independent of the original acts of negligence virtually admitted by the defendants. As such, the trial court abused its discretion in failing to grant plaintiffs motion for new trial.

MOTION IN LIMINE - FAILURE TO SUPPLEMENT EXPERT REPORTS UNDER LOCAL RULE

Laster v. Light, Case No. 66747 (Cuyahoga Cty., March 16, 4995). For Plaintiff: Jack N. Turoff and For Defendant: James L. Glowacki. Opinion by: Donald C. Nugent. Sara J. Harper and James M Porter concur.

Plaintiffs tried their personal injury claim arising from an automobile accident against the defendant to a jury. One of the plaintiffs, Ms. Laster claimed that she sustained temporal mandibular joint disorder (TMJ) due to striking her face as a result of the automobile accident. Plaintiff's treating physician never stated in a report an opinion concerning causation, permanency or prognosis concerning this alleged TMJ injury. The defense obtained a defense medical and the parties each took videotape depositions of their medical witnesses prior Io trial. The morning of trial defendant filed a motion in limine seeking to exclude the treating doctor's opinions because Local Rule 21.1 requiring expert reports in supplementation was not followed. The appellate court noted that a trial court is permitted to exercise its discretion in respect to this kind of decision. Because the defendant could not show true prejudice or surprise by the treating physician's opinions the appellate court refused to find that the trial court abused its discretion in denying the motion in limine. Key to the court's determination was the severe prejudice which would be visited upon the plaintiff had the testimony been excluded.

PREMISES LIABILITY - SMOKE DETECTORS

Steele v. McNatt, Case No. 67284 (Cuyahoga Cty., April 6, $995). For Plaintiff: Timothy A. Shimko, Janet 1 Stich, Theresa A. Tarchinski and For Defendant: Michele M. Lazzaro, Brent M. Buckley, G. Michael Curtin. Opinion by: Sara J. Harper. Donald Nugent and Terrence O'Donnell concur.

Appellants brought a wrongful death claim for their minor son and a personal injury claim for their minor daughter arising out of a fire to an adjacent residence which spread to their residence and was intentionally set by another. Defendant Cardinal sold the property in September, 1986 to the other individual defendants Pak Yan Lui and Pak Tim Lui ("The Luis"). Neither of The Luis installed smoke detectors in the home in which plaintiffs resided and leased from them. While the City of Cleveland has a smoke detector ordinance, the court found that it does not apply to single family dwellings and therefore no duty arose on the part of the Luis to provide smoke detectors. Further, the court held that any obligations the seller of the property may have had in connection with the real estate, ceased on the day the title transferred to The Luis. Thus, summary judgment was properly granted.

PRODUCT LIABILITY - INDEMNITY

O'Neill v. Showa Denko K.K., Case No. 66059 (Cuyahoga Cty., February 23, 1995). For Defendant/Appellees: Thomas S. Calder, Deborah R. Lydon and For Defendant/Appellants: Steven W. Albert, Randy J. Hart, Dennis R. Rose. Opinion by: John T. Patton. Harper and Pryatel concur.

In this products liability indemnity claim, the retailer, Revco, was not permitted to recover attorneys fees and costs in defending litigation against it by plaintiff from the manufacturer of L-tryptophan, Showa Denko K.K. Showa settled with plaintiffs just before trial. The court found that there was no right to attorneys fees or costs since no finding of liability was ever made. Further, equity would not permit reopening the case so that Revco could show fault on the part of Showa.

UNINSURED MOTORIST COVERAGE - ARBITRATION

Moczulski v. Westfield Ins. Co., Case No. *66868* (Cuyahoga Cty., February 23, 1995). For Plaintiff: Vincent F. Gonzalez and For Defendant: George W. Lutjen. Opinion by: Pryatel. Blackmon and Nugent concur.

Plaintiff was injured by an uninsured motorist and plaintiff filed a lawsuit against the uninsured motorist. Before obtaining a default judgment plaintiffs insurer requested that the plaintiff submit the case to arbitration as the policy provisions required this procedure. The arbitration resulted in a two to one award of less than the special damages. The trial court went on to reduce the arbitration award to judgment and dismissed the remaining bad faith claims. Importantly, affer the arbitration but before the final judgment at the trial court level, the Ohio Supreme Court in Schaefer v. Allstate Ins. Co., *63* Ohio St. 3d 708 (1992) was issued holding that for arbitration provisions and insurance policies to be enforceable such provision must provide for binding arbitration. Such arbitration provisions which allow for appeals after the arbitration are unenforceable. **As** such, it was improper to reduce the arbitration award to judgment and further plaintiffs bad faith claims remain.

UNINSURED MOTORIST COVERAGE -CANADIAN ACCIDENT

Duffy v. State Auto Mut. Ins. Co., Case No. 67061 (Cuyahoga Cty., March 16, 1995). For Plaintiff: Leon M. Plevin, Joel Levin and For Defendant: Burt Fulton, Gary Nicholson. Opinion by: Leo M. Spellacy. Harper and Matia concur.

In an automobile accident occurring in Canada, plaintiff made a claim under his uninsured motorist policy. Applying the Supreme Court's holding in Kurent v. Farmers Ins. of Columbus. Inc., 62 Ohio St. 3d **242** (1991) the court looked to Canada law concerning the Ohio resident's legal right to recover and found that Ontario is a no fault jurisdiction requiring that the injured person die or sustain permanent serious disfigurement or permanent serious impairment of an important bodily function caused by a continuing injury, physical in nature for liability to arise. There being no such injury in the instant case, the court sustained the trial courts granting of a motion for summary judgment that no coverage exists.

UNINSURED MOTORIST COVERAGE - "RESIDENT"

American Select v. Pavne, Case No. 67051 (Cuyahoga Cty., March 23, 1995). For Plaintiff: Ronald A. Rispo, David C. Lamb and For Defendant: Ellis **B.** Brannon, Gary Mantkowski. Opinion by: James D. Sweeney. Patricia Blackmon and Terrence ODonnell concur.

A passenger in a van driven by her niece was struck by an uninsured motorist on the way home to Pennsylvania. The plaintiff did not permanently reside with her sister, the named insured, but she did live there one-fourth of every year, which period of residency occurred regularly. She was not a temporary or transient visitor. Thus the court held that she was a "resident of...[the] household."

UNINSURED MOTORIST COVERAGE - SAVOIE APPLIED

Viccarone v. Colonial Penn Ins. Co., Case No. 66822 (Cuyahoga Cty., February 23, 1995). For Plaintiff: Jeffrey H. Spiegler, James L. Desse and For Defendant: Jeffrey W. VanWagner, Lawrence F. Peskin, Stanley S. Keller. Opinion by: Leo M. Spellacy. Patton and O'Donnell concur.

The court applied Savoie v. Grange Mut. Ins. Co., 67 Ohio St. 3d 500 (1993) to a dispute involving wrongful death damages on behalf of multiple next-of-kin living within the same household under an uninsured/underinsured motorist provision. Each next-of-kin has a separate claim under the limits but the insurance coverage will not exceed the limits of $300,000.00 since inter family stacking is not permitted under Savoie and therefore the personal injury claim settled for $100,000.00 left $200,000.00 to be distributed among the

next-of-kin. Savoie held that intra family stacking may not be precluded. (i.e., stacking of non-resident relatives' polices on top of a resident relatives policy.)

UNDERINSURED MOTORIST COVERAGE - WRITTEN NOTICE WITHIN 24 MONTHS

Hnanicek v. American Select ins. Co., Case No. 66627 (Cuyahoga Cty., February 9, 1995). For Plaintiff: Michael J. Flament, Daniel J. Ryan and For Defendant: William H. Baughman, Jr., Carolyn M. Cappel. Opinion by: Porter. Blackmon and Dyke concur.

The court enforced an insurance company provision requiring written notification of claim for underinsured motorist benefits within 24 months after the accident. The court rejected the argument that notice to the agent of the accident a day after it occurred was sufficient. Since notification in writing of the uninsured motorist claim occurred more than two years after the accident, the court felt the reasonable time limit of 24 months as a condition to bringing an action against the company was appropriate and reasonable under the circumstances.

WORKERS' COMPENSATION - NEW TRIAL

Crow v. Curtis Indus., Case No. 66927 (Cuyahoga Cty., February 9, 1995). For Plaintiff: Steven Sterner and For Defendant: Jane P. Wilson, Jon M. Dileno. Opinion by: Dyke. Sweeney and Porter concur.

The court reversed the trial court's denial of a motion for new trial based upon newly discovered evidence. The defense attempted to prove that the plaintiff injured her back playing racquet ball with her husband. Plaintiff countered this argument by claiming that her husband was in Las Vegas at the time. Plaintiff supplied the airline ticket of father-in-law with the same name of her husband to prove this contention in pretrial discovery. Defendant employer subpoenaed the airline's records and, affer trial was over, the airlines submitted a ticket verifying that plaintiffs husband was in Cleveland prior to her injury supporting defendant's theory and directly contradicting plaintiffs assertion that her husband was in Las Vegas. As such, the trial court should have granted the employer's motion for new trial.

WORKERS' COMPENSATION - STATUTE OF LIMITATIONS

Forster v. Ohio Bureau of Workers' compensation, Case No. 68170 (Cuyahoga Cty., April 6, 1995). For Plaintiff: Vincent Foster, David A. Kulwicki; For Defendant Bureau of Workers' Compensation Albert Q. Corsi; and For Reliance Mechanical Corp.: Robert Matyjasic. Per Curiam - Leo M. Spellacy. David T. Matia and Ann Dyke.

In this workers' compensation claim, plaintiff was injured on October 8, 1988 when a piece of concrete fell on his head causing him to fall to the ground. Although he didn't immediately note an injury to his wrists, he did have an injury to his neck and a workers' compensation claim was filed in that regard. In June of 1989 his hands began to tingle and on August 22, 1989 test results interpreted by a neurologists indicated that he had bilateral carpel tunnel syndrome. Thereafter, on November 5, 1990 a notification of additional claim was filed with the Bureau of Workers' Compensation. The Bureau ruled that the "flow" injury was not timely filed within two years of the October 8, 1988 original injury and thus disallowed the claim for bilateral carpel tunnel syndrome. The trial court overruled defendant's motions for summary judgment and remanded to the Bureau for further proceedings. On appeal, the court applied Clementi v. Wean United, Inc., 39 Ohio St. 3d 342 (1988) and indicated that the time limitation of Ohio Revised Code Section 4123.84 only applies to initial date injuries and not to residual or flow through injuries. The court found that since the claim for additional injury was filed within two years of its discovery it was timely filed.

WORKERS COMPENSATION - SUBROGATION

Bates v. LTV Steel Co., Case No. 67039 (Cuyahoga Cty., April 6, 1995). For Plaintiff: Lawrence W. Corman, William M. Kovach and For Defendant Aubrey B. Willacy, Jody Le Perkins. Opinion by: Terrance O'Donnell. James D. Sweeney and Patricia Blackmon concur.

In this action, plaintiffs obtained a jury verdict against two separate entities for injuries she sustained while employed by LTV Steel Co. After the jury verdict, LTV moved to intervene in order to assert its alleged subrogation rights under Ohio Revised Code Section 4123.93. For such rights to arise at all the statute had to be applied retroactively since it did not become affective until January 21, 1994, three years and seven months after plaintiffs cause *of* action arose. The trial court refused to allow LTV to intervene in this regard and the Court of Appeals affirmed this pointing out that Ohio Revised Code Section 1.48 requires that *a* statute be presumed to be prospective in operation unless expressly made retrospective. Since the statute is not expressly retroactive the court refused to apply it in that fashion. The controversy centered upon the word "claim" as used in Section 7 of the House Bill 107 enacting Revised Code Section 4123.93.

VERDICTS AND SETTLEMENTS

James B. Harakal, et al. v. Furon Company. et al.
Court: Cuyahoga County Common Pleas
Settlement: April, 1995
Plaintiffs' Counsel: Andrew P. Krembs, Richard C. Alkire
NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A.
Defendants' Counsel: C. Richard McDonald, DAVIS AND YOUNG CO., L.P.A.
James G. Gowan, GALLAGHER, SHARP, FULTON & NORMAN
Type of Action: Premises Liability

Mis-wired electrical system failed to provide for complete shut down of transformer while plaintiff was performing maintenance services.

Damages: Electrical burns to the right arm, hand and leg resulting in permanent nerve and muscle damage, including complex sensory loss and motor weakness. In addition, plaintiff suffers from post traumatic stress disorder as a result of this accident for a 49 year old male.

Plaintiffs' Experts: Roderick Jordan, M.D., Plastic and Reconstructive Surgeon
Jose W. Santiago, M.D., Psychiatrist
Theodore Bernstein, Ph.D., Electrical Engineer
Fred Packard, Transformer Technician Expert
Robert Ancell, Ph.D., Vocational Consultant
Defendants' Experts: Michael Keith, M.D., Orthopedic Surgeon
Mark Podany, Engineer

Settlement: $1,150,000.00

Biros. et al. v. Jones. et al..
Court: U.S. District Court
Plaintiffs' Counsel: John B. Gibbons
Defendants' Counsel: James Miller, Assistant Prosecuting Attorney for Trumbull Cty.
Type of Action: 42 U.S.C. 2511 (Civil Remedies for Wiretapping)

Plaintiff, civilian dispatcher employed by a Township Police Department, brought actions pursuant o 42 U.S.C. 2511, et seq. by reason of Chief of Police and other police officers, acting with the tacit approval of members of Board of Township trustees installing listening devices in order to overhear union related activities of the plaintiffs. The events occurred in 1988. The plaintiffs brought this action in 1993 after the indictment and conviction of police offer in Common Pleas Court. After a summary judgment motion, based upon statute of limitations was overruled, a settlement was reached.

Plaintiffs' Expert: NIA
Defendants' Expert: NIA

Settlement: $80,000.00

Wanetta Amos v. Vermilion Manor Nursing Home, et al.
Court: Lorain County Common Pleas Court
Settlement: December, 1993
Plaintiffs Counsel: George E. Loucas, BECKER & MISHKIND
Defendants' Counsel: Patrick M. McLaughlin
Insurance Company: The Hartford
Type of Action: Nursing Home Negligence

Plaintiff, Wanetta Amos, was 77 years old with a two year history of Alzheimer's when she was admitted on May **24,** 1991 to the Defendant Vermilion manor Nursing Home for long term rehabilitative care. The admitting physician's orders required the combination of side rails and waist posey restraints for her own safety and confusion. She was admitted at approximately 1:00 p.m. and she was observed to have fallen in the hallway at approximately 2:45 p.m. Plaintiff was diagnosed with a fractured hip two days later.

Damages: Fractured hip, acceleration of Alzheimer's from Stage II and III with immobility and decubitus ulcer formation.

Plaintiffs Expert: William Pendelbury (Burlington VT)
Defendants' Expert: Jeffery Klein, Internal Medicine & infectious Disease (Akron OH)

Settlement: $87,500.00

Edwin Morales, Admin., Etc. v. Hospital "X"
Settlement: July, 1994
Plaintiff's Counsel: Michael **F.** Becker
Defendant's Counsel: C. Cheryl Atwell
Type of Action: Medical Malpractice-Wrongful Death

Onset of viral symptoms with diarrhea in two and a half week old infant. Several visits to emergency room and outpatient clinic. Discharge from three day inpatient stay despite ongoing gastrointestinal distress and one ounce weight **loss.** Infant in shock two days after discharge; death from sepsis and multi-system organ failure secondary to mismanagement of diarrhea.

Damages: Death of one month old infant.

Plaintiffs Experts: John L. Adams, M.D. (Pediatrician)
Michael K. Farrell, M.D. (Pediatric Gastroenterologist)
Steven N. Lichtman, M.D. (Pediatric Gastroenterologist)
Defendant's Expert: Timothy A. Gooden, M.D. (Pediatrician)

Settlement: $700,000.00

Dorothv Smith, et al. v. John D. Campbell, M.D.
Court: Ashtabula County (Federal Court)
Settlement: September, 1994
Plaintiffs' Counsel: Michael F. Becker
Defendant's Counsel: Anthony P. Dapore
Type of Action: Medical Malpractice

A 70 year old woman admitted with symptoms of transient ischemic attack was placed on Heparin. She remained on this potent anti-coagulant despite improved symptoms, developed a brain bleed and was life-flighted to the Cleveland Clinic for evacuation of a large hematoma secondary to mismanagement of Heparin therapy.

Damages: Minimal residual physical impairment but cognitive/mental deficits.

Plaintiffs' Experts: Maurice Victor, M.D. (Neurologist)
John P. Conomy, M.D. (Neurologist)
Dean Delis, M.D. (Neuropsychologist)

Settlement: $525,000.00

Judith Ehlen v. Bruno Machinery Coro.
Court: Cuyahoga County Common Pleas Court
Settlement: September, 1994
Plaintiffs Counsel: John Meros
Defendant's Counsel: Mark O'Neill, Harry Sigmier
insurance Company: Self-insured
Type of Action: Products (against successor manufacturer)

Plaintiff suffered crush-amputation of arm on embossing press manufactured in 1922 by the Sheridan Co., without a point-of-operation guard. Harris Corp. had bought Sheridan Co. in 1964 and failed to adequately warn plaintiffs employer of dangers of old, unguarded machinery. Guards for embossing presses were in existence in 1922 and were used on some presses built by Sheridan before 1922.

Damages: **Loss** of arm at the elbow.

Plaintiffs Expert: Gerald Rennell, Machine Guarding (Grand Blanc MI)
E. Patrick McGuire, Warnings (Bernardsville NJ)
Richard Harkness, Engineer (Hudson OH)
Defendant's Expert: Richard Qtterbein, Engineer (Edison NJ)
Jack Vandeman, Engineer (Melbourne FL)

Settlement: Confidential

Estate of Jane Doe v. ABC Hospital. et al.
Court: Cuyahoga County Common Pleas Court
Settlement: November, 1994
Plaintiffs Counsel: Donald E. Caravona, Michael W. Czack
Defendants' Counsel: Gallagher, Sharp, Fulton & Norman
Insurance Company: Self-insured
Type of Action: Medical Malpractice-Wrongful Death

Defendant doctor failed to diagnose and appropriately treat a leaking cerebral aneurysm. The decedent sustained a subarachnoid hemorrhage 10 days later and subsequently died.

Damages: Death

Plaintiffs Expert: Luciano Modesti, M.D., Neurosurgeon
Glenn Hamilton, M.D. Internal Medicine
John Burke, Ph.D., Economist
Defendants' Expert: Melvin Shafron, M.D., Neurosurgeon
Jeffrey Ross, M.D., Internal Medicine

Settlement: Confidential

Lebron v. Sennett Steel Corp.
Court: Cuyahoga County Common Pleas Court
Settlement: December, 1994
Plaintiffs Counsel: Michael R. Kube, William Shradek
Defendant's Counsel: Stan Keller
Insurance Company: United States Fidelity Guaranty
Type of Action: Auto/Pedestrian

Defendant's semi tractor trailer backing on berm of 1-77 backed over Plaintiff, an **ODOT** worker.

Damages: Crush injury to pelvis causing death.

Plaintiffs Expert: John Burke
Hank Lipian

Settlement: $650,000.00

Jane Doe v. CRW Inc. and National Union Fire Insurance Co.
Settlement: December, 1994
Plaintiffs Counsel: Kent B. Schneider, Thomas Escovar
Defendants' Counsel: Christopher Nolan for the tortfeasor and Steven Janik for Umbrella Carrier
Insurance Company: National Union Fire Insurance Co.
Type of Action: Auto/UIM

Plaintiffs decedent was a 38 year old pipefitter making approximately $45,000.00 a year when on September 17, 1993, a truck owned by CRW, Inc. went left of center and killed him. He was survived by a wife and five children.

After the institution of suit, the tortfeasor ultimately pad the $1,000,000.00 limits of its liability coverage. **As** a result of two other lawsuits, underinsured motorist benefits in the amount of $425,000.00 was obtained.

At the time of the accident, the decedent was driving a vehicle owned by his employer. The employer had underlying liability limits of $1,000,000.00 but had rejected underinsured motorist coverage in the underlying policy. The employer had an umbrella policy of $25,000,000.00. The umbrella policy did not contain underinsured motorists protection. Suit was instituted against the umbrella carrier, National Union Fire Insurance Company, alleging that the umbrella policy should be deemed to have underinsured motorist coverage as a result of their failure to properly reject same. The case against the umbrella carrier was ultimately settled for an additional $5,000,000.00, representing a total recovery of $6,425,000.00.

Damages: Death

Settlement: $6,425,000.00

Henry Roth, Adm. v. MetroHealth Medical Center for Skilled Nursing Care
Court: Cuyahoga County Common Pleas Court
Settlement: January, 1995
Plaintiffs Counsel: Paul Kaufman, Scott Fromson
Defendant's Counsel: Jeffrey VanWagner
insurance Company: None
Type of Action: Medical Malpractice-Wrongful Death

A 67 year old woman, totally disabled and totally dependant due to multiple sclerosis, choked while being fed lunch resulting in arrest and death three days later.

Damages: Death.

Plaintiffs Expert: Jack Bulmash, M.D. (Chicago IL)

Plaintiffs demand in closing argument: **$1**50,000.00 - 200,000.00
Defendant's suggestion in closing argument: *$0*

Offer: $25,000.00 Judgment: $75,000.00

Daniel R. Skrobut, II, et al. v. Emergency Professional Services, Inc., et **ai.**
Court: Cuyahoga County Common Pleas Court
Settlement: February, 1995
Plaintiffs' Counsel: Mark Hilkert, SCANLON & GEARINGER
Defendants' Counsel: Anthony P. Dapore

Insurance Company: PIE
Type of Action: Medical Malpractice

On December 30, 1990, 10 month old plaintiff with sudden onset of fever and vomiting was taken by mother to emergency room where physician diagnosed acute viral syndrome although lab tests conducted revealed a serious bacterial infection. Patient discharged without an antibiotic and within twelve hours developed meningococcemia.

Damages: Misdiagnosis led to amputation of all ten fingers and one above **knee** and one below knee amputations.

Plaintiffs' Experts: Charles A. Kallick, M.D.
Paul H. Volkman, M.D.
Robert B. Ancell, M.D.
Defendants' Experts: Gary R. Fleisher, M.D.
Martin B. Kleiman, M.D.
Dennis M. Super, M.D.

Plaintiffs' demand in closing argument: 10 Million
Defendants' suggestion in closing argument: *$0*

Offer: $0 Demand: $1.5 Million (pretrial)

Judgment: 6.7 Million

Eileen Maloney, Executrix v. L. Bruce Hensley
Court: Cuyahoga County Common Pleas Court
Settlement: February, 1995
Plaintiffs Counsel: Anne L. Kilbane, Harlan M. Gordon
NURENBERG, PLEVIN, HELLER & McCARTHY *CO.,* L.P.A.
Defendant's Counsel: Matthew Moriarity
JACOBSON, MAYNARD, TUSCHMAN & KALUR
Insurance Company: PIE Mutual
Type of Action: Medical Malpractice-Wrongful Death

Failure to diagnose rectal cancer at a stage where it could have been cured.

Damages: Rectal cancer which invaded the liver causing death

Plaintiffs Expert: Kenneth McCarty, M.D. (Pittsburgh PA)
Defendant's Expert: John Bond. M.D. (Minneapolis MN)

Plaintiffs demand in closing argument: $3,900,000.00
Defendant's suggestion in closing argument: $0

Offer: $0 Demand: Prayer

Judgment: $2,762,000.00

John Doe, et al. v. ABC Clinic
Court: Cuyahoga County Common Pleas Court
Settlement: March 3, 1995
Plaintiffs' Counsel: Dennis R. Lansdowne, William Hawal
Insurance Company: Self-insured
Type of Action: Medical Malpractice

Plaintiff entered ABC Clinic for a transluminal percutaneious coronary angioplasty. The procedure went smoothly and plaintiff was due to be discharged the following day. However, plaintiff began experiencing chest pain and was returned to the cardiac catheterization lab where it was determined a clot had developed in the coronary artery. This is a recognized risk of the procedure, occurring in approximately 5% of the procedures.

The doctors were familiar with this complication its management. The situation requires careful monitoring of bleeding by the patient.

The bleeding that is of concern is from the femoral artery, the artery in the thigh that is entered for the angioplasty. Because the clot in the coronary artery requires some anticoagulants, the wound in the thigh can bleed excessively. Therefore, the patient must be carefully monitored to make sure the bleeding does not get to a dangerous level.

Plaintiff was not carefully monitored an was permitted to bleed down to a very dangerous level and plaintiff went into cardiac arrest which resulted in anoxic brain injury.

Damages: Brain damage. Physical and mental disabilities and inability to return to work.

Plaintiffs' Expert: John M. Lewis, M.D., Cardiology (Houston TX)
John F. Burke, Jr., Ph.D., Economist (Cleveland OH)
Defendant's Expert: Richard J. Candella, M.D., Cardiology (Columbus OH)
Joseph R. Durham, M.D., General Vascular Surgery (Chicago IL)

Demand: $2,200,000.00 Settlement: $1,300,000.00

John Sekerak, et al. v. St. Luke's Hospital, et al.
Court: Cuyahoga County Common Pleas Court
Settlement: March, 1995
Plaintiffs' Counsel: David I. Pomerantz, Fred C. Crosby, David Matia, Jr.
Defendants' Counsel: John Jackson, Linda Epstein

Type of Action: Medical Malpractice

Plaintiff, after recently undergoing triple by-pass surgery, an embolism which became lodged in his popliteal artery, surgeon failed to obtain satisfactory intraoperative arteriogram which would have shown retained clot material in the leg. Thereafter, negligently discontinued Heparin on mistaken belief that plaintiff had a rare reaction to the drug. (Hospital granted directed verdict.)

Damages: Above the knee amputation of right leg.
Plaintiffs' Expert: Arthur Golding, M.D., Vascular Surgeon (California)
Leland Green, M.D., Hematologist (California)
Defendants' Expert: Bhagwar Satiari, M.D., Vascular Surgeon (Columbus OH)

Plaintiffs' demand in closing argument: $2,000,000.00
Defendants' suggestion in closing argument: $0

Offer: $0 Demand: $2,000,000.00

Judgment: $2,000,000.00

Fowler v. Jones v. A&W Foods
Court: Cuyahoga County Common Pleas Court
Settlement: March, 1995
Plaintiff's Counsel: Frank Bolmeyer
Defendants' Counsel: Walter Krohngold
Insurance Company: Allstate
Type of Action: Auto (Red Light)

Who done it red light case. Allegation that defendant's eyewitness was to be paid if defendant won. Defense expert, Dr. Richard Kaufman, admitted that 5% of his practice was IMEs.

Damages: Soft tissue neck and back.

Plaintiff's Expert: Fabio Ochoa, M.D.
Defendants' Expert: Richard Kaufman, M.D.

Plaintiff's demand in closing argument: $80,000.00
Defendants' suggestion in closing argument: $0

Offer: $0 Demand: $25,000.00

Judgment: $95,000.00