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CLEVELAND ACADEMY OF TRIAL ATTORNEYS SEPTEMBER, 1995 NEWSLETTER

EDITORS: DAVID PARIS, ESQ./PAUL V. WOLF, ESQ.

PRESIDENT'S COLUMN

It has been 3 1/2 months since the Installation Dinner back in June and since that time the Officers and Board of Trustees have awakened from the summer Siesta, returned the golf clubs to the basement and begun to establish the Academy's schedule for the rest of the year.

Rick Alkire has capably undertaken to organize and run this year's luncheon program which will begin September 26 with a presentation by Rod Durgin, Ph.D. Dr. Durgin is the principal in Vocational Assessments, Inc. Our October luncheon program is scheduled for October 24 and we are pleased to have Clair Carlin, the current President of the Ohio Academy of Trial Lawyers, to present his update on major legislative initiatives which are of importance to all of us. Our November program is scheduled for the 16th and we are honored to have Judge Marianna Brown Bettman travel from Cincinnati from her seat on the First District Court of Appeals.

Each of these luncheons will again be offered with **1.0** hours of continuing legal education credit and the charges are minimal, covering our overhead for the lunch which is served.

With this initial cover letter for this month's Newsletter, I want to take the opportunity to introduce a "Defense Expert Physician of the Month Club" as a means to solicit new contributions to our Exchange Bank. For reasons that are totally unclear, our Bank is woefully underrepresented by the extensive work of Dr. Ralph J. Kovach, M.D., the orthopedic surgeon that each of us has seen employed by the defense bar over the last decade (or more). Attached to this Newsletter is the submission form which we require in order to organize in a computer-friendly fashion all future submissions to the Exchange Bank. Ann Garson, Rick Alkire and their committee have spent dozens of hours retrofitting our existing exchange bank so that we can develop a user-friendly index, with

annotations, of all of the information existing and to be deposited in the Exchange Bank. Please go through your files to identify some of Dr. Kovach's work, complete the attached form and submit the materials to Rick Alkire's attention at **1370** Ontario Street, 1st Floor, Cleveland, Ohio **44113-1792.**

In the future, the Exchange Bank will be maintained at our printer's office, Cromwell Crooks, at **1540** St. Clair Avenue, Cleveland. This process has been underway for several months now and we hope to complete this transfer over the next ***6*** to *8* months.

The Academy is proud to again be involved in the Race-for Wishes 111, the annual race from the Make-A-Wish Foundation in conjunction with the good efforts of the Cuyahoga County Bar Association. Race-for-Wishes III is scheduled for September **30,** 1995, at the MetroPark *Zoo.* CCBA and the Make-a-Wish Foundation anticipate a great success, with the support of Channel 5. Your support and contributions would be greatly appreciated. All of the terminally ill children who benefit from these efforts deserve the support of the Academy and we are proud to be a part of this annual program.

Remember to mark your calendars for the Holiday Dinner-No Dinner Dance on November **18,** again at the Halle's Building.

Finally, I would like to thank Rick Alkire for his dedicated service as Editor of this Newsletter for the last two years. This month's Newsletter has been edited by the combined efforts of David Paris and Paul Wolf and it is only fitting that two bright, active minds would be necessary to replace Rick in this task. David and Paul promise a continuation of the Newsletter tradition which has become a benchmark for similar publications by other local trial lawyer associations around the State of Ohio.

Very truly yours,

David W. Goldense

INSURANCE COVERAGE - COLLATERAL ESTOPPEL

Edley v. Cross Roads Auto Mile Ford, Case No. 67264 (Cuyahoga Ctv., July 20, 1995). For Plaintiff: Lester S. Potash and for-Defendant: Joseph W. Pappalardo, Rocco D. Potenza. Per Curiam.

Plaintiff was injured when rear-ended by a car driven by Collins and provided by Collins' employer, Cross Roads Auto Mile Ford. Collins, a salesman with Cross Roads Auto Mile Ford, was operating the vehicle on a week night at 9:30 p.m. Plaintiff filed suit against Collins and his employer, Cross Roads, on the theory that Collins was acting within the course and scope of his employment at the time of the accident. The case was referred to arbitration and an award was returned in favor of the plaintiff as to Defendant Collins but the arbitrator found against plaintiff **on** her claims against Cross Roads. Plaintiff filed a supplemental complaint under Revised Code Section 3929.06 adding Motorists Mutual Insurance Company as a defendant, alleging that Collins operated the motor vehicle with the knowledge and consent of Cross Roads and, consequently, was covered by Cross Roads insurance policy with Motorists Mutual. Motorists Mutual moved for summary judgment and the trial court granted the motion, finding that "the issue of scope of employment having been decided adversely to Edley per Journal Entry dated 9-15-93, Defendant Motorists Mutual has no obligation to pay damages for personal injury or property damage arising out of the incident of personal injury or property damage arising out of the incident of 8-14-90." The Court of Appeals ruled that the doctrine of collateral estoppel did not preclude the claims brought in the supplemental complaint because Motorists Mutual was not a party to the prior proceeding and the issue of insurance coverage was not addressed in the prior action. However, the Court of Appeals affirmed the trial court's granting of Summary Judgment because plaintiff was unable to rebut with contrary evidence the Affidavit of the President of Cross Roads Ford which stated that Collins did not have permission to drive the car for his personal use during non-working hours.

SLIP *AND* FALL

Pochatek v. Minoff, Case No. 67983 (Cuyahoga Cty., July 20, 1995). For Plaintiff: George William Joseph, Jr. and For Defendant: Allen B. Glassman. Opinion by Patricia Ann Blackmon. Sara J. Harper and Donald C. Nugent concur.

Plaintiff traversed an asphalt parking onto a concrete landing at the base of a set of steps going into a building which housed a tanning salon. The concrete landing was approximately

two and one-half inches above the level of the asphalt parking lot. After finishing his tanning session, plaintiff exited the building by going down the steps onto the concrete landing. As plaintiff walked from the landing and stepped onto the asphalt parking lot, his left foot went onto a sloping part of the asphalt. Plaintiff fell backwards onto his right shoulder, fracturing a bone in his left foot and tearing the rotator cuff in his right shoulder. Although plaintiff had been in and out of the building prior to his fall, he did not notice the height differential between the concrete landing and the asphalt parking lot. The case proceeded to bench trial and after overruling Defendant's Motion for Directed Verdict, the trial court entered judgment in favor of the plaintiff. The Court of Appeals reversed the trial court's verdict in favor of the plaintiff and held that the defendant was entitled to judgment as a matter of law because the height differential between the landing and the parking lot was the type of minor imperfection commonly encountered traversing in and out of buildings. Thus, the defendant did not, as a matter of law, create an unreasonably dangerous condition sufficient to breach its duty to exercise ordinary or reasonable care for the safety of his invitees.

UNDERINSURED MOTORISTS COVERAGE

Hunt v. Nationwide Mutual Insurance Co., Case No. 66562 (Cuyahoga Cty., July 6, 1995). For Plaintiff: Claudia R. Eklund and For Defendant: Timothy D. Johnson, Gregory E. O'Brien. Opinion by Joseph J. Nahra. Sara J. Harper and David T. Matia concur.

Plaintiff, a resident of Connecticut, purchased a policy of automobile insurance containing uninsured/underinsured motorists coverage in the amount of $100,000.00. Although defendant's home office is in Columbus, Ohio, it sells insurance in all states. The policy purchased by plaintiff was drafted in accordance with and referred to Connecticut law. The policy contained the following language: "we will pay bodily injury damages that you or your legal representative are legally entitled to recover from the owner or driver of an uninsured motor vehicle. Bodily injury means, bodily injury, sickness, disease or death. Relatives living in your household also have this protection." Plaintiff's emancipated daughter, a resident of Ohio, was struck and killed in Cleveland by an underinsured motorist. The tortfeasor paid the $12,500.00 limit of liability under his policy and plaintiff made a demand upon defendant for underinsured motorists benefits. Defendant refused coverage and the plaintiff filed a declaratory judgment action in the Cuyahoga County Court of Common Pleas. The trial court granted Defendant's Motion for Summary Judgment ruling that although the law of Ohio was applicable to Plaintiff's Complaint, the theory upon which plaintiff sought to

establish coverage was too remote from the purpose of the provisions under Revised Code 3937.18. The trial court also ruled that defendant's contractual limitation on underinsured motorists coverage that the insured must sustain bodily injury was a valid restriction on coverage. The Court of Appeals affirmed on rationale different than that of the trial court. The Court of Appeals did not pass upon the "Sexton" issue but, rather, found that the action sounded in contract rather than tort and, accordingly, the law of Connecticut applied rather than the Ohio Uninsured Motorists Statute. Since under Connecticut law, only the executor or administrator of a decedent's estate may maintain an action for wrongful death against the tortfeasor, a surviving next-of-kin is not presumed to have suffered a loss. Thus, under the express language of the underinsured motorists provision, plaintiff could not demonstrate that she was "legally entitled to recover."

INTENTIONAL TORT - INSURANCE COVERAGE

Ward v. Custom Glass and Frame, Inc., Case No. 67494 (Cuyahoga Cty., June 29, 1995). For Plaintiff: Peter H. Weinberger and For Defendants: Christopher M. Bechhold, Jack F. Fuchs, Donald P. Screen. Opinion by Sara J. Harper. Ann Dyke and Joseph J. Nahra concur in judgment only.

Plaintiff brought intentional tort claim against his employer for the removal of a guard from a bench saw which caused plaintiff injury. The defendant insurance company denied coverage but chose to defend Custom under the policy's reservation of rights provision. Plaintiff received an arbitration award of $13,200.00 in compensatory damages. The insurance company appealed the award de novo to the Court of Common Pleas. Employer's counsel demanded that the insurer either accept coverage of plaintiff's claim or withdraw the appeal. The insurer refused to provide coverage and subsequently withdrew its Notice of Appeal. The employer then settled with the plaintiff for the arbitrated amount. Plaintiff then filed a supplementary Complaint against the insurer seeking recovery for the amount of the judgment pursuant to Revised Code Section 3929.05. The trial court granted Plaintiff's Motion for Summary Judgment, holding the insurer liable for the damages. The Court of Appeals affirmed by ruling that the insurance carrier's exclusion of coverage for employer intentional torts was applicable only to those intentional torts where the employer had a "direct intent" to cause the harm which in fact resulted. On the other hand, the Court of Appeals held that the exclusion did not apply and that coverage was to be afforded to that genre of employer intentional torts where harm is substantially certain to occur as a result of an intentional act but is devoid of any

intent on the part of the employer to actually cause or desire the harmful result. The court relied upon two Suvreme Court of Ohio decisions: Harasyn v. Normandy Metals, Inc., (1990), 49 Ohio St.3d 173 and Physicians Insurance Company v. Swanson, (1991), 58 Ohio St.3d 189.

GOVERNMENTAL IMMUNITY - MUNICIPAL OPERATION OF SWIMMING POOL

Mills v. City of Cleveland, Case No. 67665 (Cuyahoga Cty., June 15, 1995). For Plaintiff: Robert F. Linton and For Defendant: Malcolm C. Douglas, Assistant Director of Law. Opinion by John T. Patton. David T. Matia and Diane Karpinski concur.

Plaintiff's decedent nearly drowned in an indoor swimming pool operated by the City of Cleveland. The lifeguard on duty pulled plaintiff's decedent out of the pool an estimated ten to fifteen minutes after the initial submersion. A few days later the decedent passed away from his injuries. The trial court granted summary judgment based upon Ohio Revised Code Section 2744. In affirming the decision of the trial court, the Court of Appeals noted that plaintiff's claim did seem to fall within one of the five exceptions contained in Revised Code Section 2744.02(B) to the general rule of immunity. Indeed, the Court of Appeals agreed that Revised Code Section 2744.02(B)(4) may render political subdivisions liable for loss to persons or property that is caused by the negligence of their employees and that occurs within or on the grounds of buildings that are used in connection with the performance of a governmental function...Moreover, the Court of Appeals noted that Revised Code Section 2744.01(C)(2)(u) states that a "governmental function" includes, but is not limited to...the operation of any...indoor recreational facility...or swimming pool. Nevertheless, the Court of Appeals affirmed the trial court decision because it felt constrained to follow the Supreme Court of Ohio decision in Garrett v. Sandusky (1994), 68 Ohio St.3d 139, which held that the operation of swimming pools is subject to sovereign immunity.

DUTY TO PROTECT ENDANGERED OR HURT EMPLOYEE

Nureddin v. Northeast Ohio Regional Sewer District, Case No. 68048 (Cuyahoga Cty., June 8, 1985). For Plaintiff: Mark A. McClain and For Defendants: Philip J. Weaver, Mary B. Percifull and Sara J. Fagnilli. Per Curiam.

Over a period of approximately one and one-half to two hours plaintiff's decedent became increasingly ill. The illness

manifested itself in extreme perspiration, repeated vomitting and a generalized feeling of illness. All of these symptoms were witnessed by co-workers and the decedent's workplace supervisor. Evidence was adduced that shortly after the onset of the symptoms decedent informed his supervisor that he wanted to be taken by ambulance to the hospital. Evidence was also adduced that the supervisor informed decedent that since his illness was not work-related that he could not be transported by ambulance and/or security to the hospital and that he would contact decedent's wife. There existed further evidence that when the supervisor was unable to contact decedent's wife he left for a scheduled sales meeting. Decedent's co-workers became increasingly concerned until they contacted workplace security that decedent was unresponsive and his eyes were glazed over. There was further evidence included in the EMS report that the decedent was "down" approximately 30 to 45 minutes before anyone placed the emergency call. Shortly after the arrival of EMS, plaintiff was pronounced dead with the cause of death listed as coronary sclerotic heart disease. A wrongful death claim was filed based upon Section 314(B) of the Restatement of the Law 2d, Torts, which has been adopted by the State of Ohio and imposes liability upon an employer for failure to exercise reasonable care to avert serious harm to an employee where the master has knowledge of the imminent danger to the employee. The trial court granted the Defendant's Motion for Summary Judgment based on defendant's assertion that they were without requisite knowledge of the severity of decedent's condition. The Court of Appeals reversed the decision of the trial court finding that there existed sufficient factual material to permit a reasonable finder of fact to conclude that the employer violated its duty to protect an endangered or hurt employee.

STATUTE OF LIMITATIONS - OHIO SAVINGS STATUTE– F.E.L.A.

Cerney v. Norfolk and Western Railway Company, Case Nos.: 67010 and 67649 (Cuyahoga Cty., May 25, 1995). For Plaintiff: Peter H. Weinberger, Thomas J. Escovar and For Defendant: Forrest A. Norman, Jay Clinton Rice. Opinion by Leo M. Spellacy. Patricia Blackmon and Donald C. Nugent concur.

Plaintiff was injured on August 9, 1988, as a result of the alleged negligence of defendant. Plaintiff filed suit on August 8, 1990, pursuant to F.E.L.A. The case was set for trial on August 11, 1992. A Motion for Continuance was filed on August 4, 1992. Subsequently, a pre-trial was held and the trial court refused to grant the Motion for Continuance because the case had been pending for two years and the court was required by the rules of the Supreme Court to resolve personal injury cases within two years. The trial court apparently suggested that

plaintiff's counsel might utilize the option of voluntary dismissal without prejudice reserving the right to refile within one year. At no time did defense counsel object to the vehicle of voluntary dismissal nor did he acquiesce in its utilization. The case was refiled on August **6, 1993.** Defendant filed a Motion to Dismiss, asserting that the refiled Complaint was outside the three year statute of limitations provided for under F.E.L.A. and that the Ohio Savings Statute, R.C. **2305.19,** did not apply to this claim arising under federal law. On December 22, 1993, plaintiff filed a Motion for Declaratory Judgment, seeking to have the voluntary dismissal declared void ab initio because the same was filed with the understanding that the matter could be refiled pursuant to the savings statute. On February **15, 1994,** the trial court denied Plaintiff's Motion for Declaratory Judgment and granted Defendant's Motion to Dismiss with Prejudice. Plaintiff appealed from this ruling but on February 25, **1994,** filed a Motion for Relief from Judgment pursuant to Ohio Civil Rule 60(A) and (B). The trial court granted the motion based on Ohio Civil Rule 60(B) **(5)** and the defendant appealed from the Judgment Entry. The appeals were consolidated and the Court of Appeals affirmed the rulings of the trial court in all instances. The Court of Appeals held that the Ohio savings statute did not apply so as to toll the three year statute of limitations contained in F.E.L.A. claim and that the conduct or acquiescence of defense counsel did not warrant utilization of the doctrines of equitable estoppel or waiver. However, the Court of Appeals also held that the trial court did not abuse its discretion in later granting Plaintiff's Motion for Relief from Judgment under Ohio Civil Rule 60(B) (5) because both counsel were under the impression that the action could be voluntarily dismissed and then refiled and, indeed, the trial court made the initial suggestion to voluntarily dismiss. Thus, it was obvious that there was no intent on the part of the plaintiff to circumvent the statute of limitations. Moreover, the Court of Appeals held that the doctrine of ***res*** judicata did not bar plaintiff's filing of a motion for relief from judgment because the issues involved in the motion were substantially different from those raised in the dismissed declaratory judgment action.

MEDICAL MALPRACTICE - LOSS OF CHANCE OF SURVIVAL

Schlachet v. Cleveland Clinic Foundation, Case No. **67569** (Cuyahoga Cty., May **18, 1995).** For Plaintiff: Dennis R. Lansdowne, John A. Lancione and For Defendant: James L. Malone, Clifford C. Masch. Opinion by: Joseph J. Nahra. Leo Spellacy and Donald Nugent concur.

Plaintiff brought medical malpractice action against defendant for her decedent's loss of a chance of survival from lung cancer along with claims for decedent's mental anguish and wife's **loss** of consortium. The parties stipulated that the defendant negligently failed to diagnose a cancerous mass in decedent's right lung on August 28, 1990. The cancerous mass was not diagnosed until April 15, 1991. During the intervening period the parties agree that the mass had increased in size so that by April 22, 1991, a pathology analysis indicated a Stage *3* adenocarcinoma of the right lung. The parties further stipulated that the defendant's negligent failure to diagnose the cancerous mass in decedent's right lung on August 28, 1990, directly and proximately resulted in the loss of a 20 to **30** percent chance of survival. The trial court granted Defendant's Motion for Summary Judgment on the authority of the Ohio Supreme Court decision of Cooper v. Sisters of Charity, Inc., (1971), 27 Ohio St.2d 242. The Court of Appeals affirmed by holding that Cooper continues to be controlling law and that that decision requires a probability of survival rather than a chance for survival. Moreover, the Court also ruled that decedent's wife could not maintain her consortium claim because she could not demonstrate the existence of a legally cognizable tort against the decedent as required by Ohio law.

JURY DELIBERATIONS - QUOTIENT VERDICT

Michelson v. Kravitz, Case No. 67342, (Cuyahoga Cty., April 27, 1995). For Plaintiff: Michael J. Rogan and For Defendant: John F. Gannon. Opinion by Patricia Ann Blackmon. David **T.** Matia and Diane Karpinski concur.

Plaintiff was operating his motorcycle in the right eastbound lane of Carnegie Avenue. Defendant was operating her motor vehicle in the eastbound lane next to plaintiff when she changed into plaintiff's lane in front of plaintiff and then slowed down in order to make a right turn into a driveway. Plaintiff was unable to stop his motorcycle and collided with defendant's motor vehicle, sustaining serious injury. The case was submitted to the jury and the jury returned a verdict in favor of the defendant. The jury's response to interrogatory #5 stated that plaintiff was ***51%*** negligent and defendant was 43% negligent. By each juror's signature were different apportionments of the negligence. Three of the jurors found plaintiff 50% or less negligent according to their apportionments. Plaintiffs filed a Motion for New Trial, arguing that the jury had rendered an impermissible quotient verdict and that the interrogatories were inconsistent with the general verdict. In support of the Motion, plaintiff filed the affidavit of a juror which revealed that the jurors had agreed in advance

to each calculate percentages and average them to come up with the resulting 57/43% apportionment of negligence. Defendant filed a Brief in Opposition and a Motion to Strike the Affidavit as inadmissible under Rule of Evidence 606(B). The trial court granted the Motion to Strike and denied Plaintiff's Motion for New Trial. In affirming the trial court's decision, the Court of Appeals held that while quotient verdicts are impermissible, in the present case there existed no evidence *aliunde* of misconduct which would serve as the prerequisite to the admissibility of the juror's affidavit. The court stated that such *aliuende* evidence as countenanced by Evidence Rule 606(B) must consist of some outside evidence of an act or event that has brought prejudical information or improper influence upon the jury. Thus, since the few slips of paper found in the jury room neither supported the existence of a quotient verdict nor was sufficient evidence *aliunde* to permit the introduction of the affidavit (which did swear to an improper quotient verdict), the judgment of the trial court was affirmed.

NEGLIGENT DESIGN

Hinckley v. Krantz, [illegible] 756 (Cuyahoga Cty., April 13, 1995). For Plaintiff: [illegible] R [illegible]klund and For Defendant: Albert J. Rhoa. Per Curia

Plaintiff, a minor, was injured by a swing located next to a playground at defendant's apartment complex. The metal swing weighed at least 100 lbs. and was located next to the adult shuffleboard court. There existed no division between the adult area and the playground. Plaintiff filed suit alleging that defendant negligently designed and maintained the playground, and negligently permitted a dangerous condition to exist on the premises. Defendant's custodian testified that he frequently warned children to stay away from the swing and that a notice had been sent to tenants informing them that adult supervision was needed in the playground area and that the shuffleboard swing was not to be used by children. In response to Defendant's Motion for Summary Judgment, plaintiff appended the deposition testimony of the custodian, a picture of the playground and shuffleboard area, and the Handbook for Public Playground Safety. The trial court granted the Defendant's Motion for Summary Judgment. The Court of Appeals in reversing the trial court held that the testimony of the custodian was sufficient to demonstrate that the defendants were on notice of the risk posed to children by the swing. Moreover, the Court of Appeals held that while defendant's failure to comply with industry safety standards as contained in the handbook did not constitute negligence *per se*, it was sufficient to present a question of material fact on the issue of negligent design. Judge Sara J. Harper dissented

because the guidelines in the Handbook for Public Playground Safety are not mandatory and the plaintiff was the first child to ever be injured by the swing.

EVIDENCE - LAY OPINION - ADMISSION

Crane v. Lakewood Hospital, Case No. 67435 (Cuyahoga Cty., April 13, 1995). For Plaintiff: Christian R. Patno and For Defendant: William H. Baughman, Jr., Deirdre G. Henry. Opinion by: James M. Porter. James D. Sweeney and Terrence O'Donnell concur.

Plaintiff was injured when a chair slid out from under her on a tile floor. As a result, the plaintiff fell and sustained serious fractures and injuries requiring a hip replacement. Her medical bills exceeded $40,000.00. Plaintiff's son observed the chairs in the atrium, where the plaintiff had sustained her fall, the day after the accident. He sat in them and slid them around and lifted them up. Pictures of virtually identical chairs from the atrium area were admitted in evidence. Based on these observations, the son testified that the chairs were "very unstable"; "arms protruded substantially past the legs"; that they were "very light" and moved over the tile floor "with ease." The court sustained a Motion to Strike the son's observation that "when someone is sitting in the chair, the center of gravity is very poor" and that the chair is "tipsy" when moved from side to side. Additionally, plaintiff's son was not permitted to testify regarding the statement made by the hospital vice-president to the effect that the chairs "shouldn't have been there." After excluding and/or striking this evidence, the trial court directed a verdict in favor of the defendant. The Court of Appeals reversed holding that plaintiff's son should have been permitted to testify with regard to the condition of the chair because his testimony was based on personal observations. The court stated that in not allowing this "critical testimony" to stand, the trial court abused its discretion because the testimony was essential to establishing the dangerous condition that caused the plaintiff's injuries. Moreover, the Court of Appeals also ruled that the trial court abused its discretion in excluding the son's testimony with regard to the hospital vice-president's statement because the statement was not hearsay within the meaning of Rule of Evidence 801(D) but, rather, an admission by a party-opponent.

INTENTIONAL TORT - FAILURE OF SAFETY BELT

Reese v. Euclid Cleaning Contractors, Inc., Case No. ***61461,*** (Cuyahoga Cty., April **13,** 1995). For Plaintiff: Peter J. Brodhead and Cathleen M. Bolek and For Defendant: Lawrence Friedlander. Opinion by: Patricia Ann Blackmon. Sara J. Harper and Joseph Nahra concur.

Plaintiff's decedent fell some thirty feet to his death while washing windows in the course and scope of his employment with the defendant. The fall occurred as a result of the snapping of a 28 year old safety belt. Evidence produced at trial demonstrated that the defendant knew the safety belt in question was 28 years old and would eventually break. Defendant knew the safety belt would have to be used at the job site where decedent sustained his fall. Although the defendant argued that decedent could have refused to do "belt work", no evidence was presented to indicate that the particular job could have been completed without the use of safety belts. Moreover, the defendant knew a window washer would be seriously injured or killed if a belt failed while it was in use. Despite this knowledge, the defendant had no program to inspect or safety test the belts and continued to send its employees on jobs which required their use. The trial court overruled Defendant's Motions for Directed Verdict at the conclusion of plaintiff's opening statement and at the close of plaintiff's evidence. The case was submitted *to* the jury upon the court's instruction and the jury returned a verdict in favor of the plaintiff in the amount of $550,000.00. The defendant appealed, arguing that the trial court should have directed a verdict because there was no evidence to support a conclusion that the defendant intended the harm which in fact resulted. The Court of Appeals affirmed the rulings of the trial court and the jury verdict and held that reasonable minds could reach different conclusions about whether defendant's actions constituted an intentional tort. Apparently, both courts felt that there was sufficient evidence that the jury could reasonably conclude that the defendant acted intentionally in providing 28 year old safety belts which were substantially certain to break at some point in time and thereby substantially certain to cause serious harm to its employees.

VERDICTS AND SETTLEMENTS

David A. McGuire. et al v. Kaiser Permanent Medical Center
Court: Cuyahoga County Common Pleas
Settlement: December, 1993
Plaintiffs' Counsel: George E. Loucas
Defendant's Counsel: Burt Fulton
Insurance Company: Self-insured
Type of Action: Medical Malpractice

David McGuire reported to Kaiser with signs and symptoms of heart failure but was referred to the Mental Health Clinic instead. He eventually experienced cardiac arrest and multi-organ systems failure but was resuscitated and maintained on an intra-aortic balloon heart pump. He went on to a full recovery but suffers a 1/3 loss of circulation to his left lower leg from the balloon pump. Plaintiff alleged failure to timely diagnose and treat heart failure i a patient with **a** congenital aortic valve anomaly.

Damages: Circulatory compromise (1/3 decrease) of left lower extremity.

Plaintiffs' Experts: Dr. Robert Botti, cardiologist, Cleveland
Dr. Joel Steinberg, internist/psychiatrist, Cleveland

Defendant's Experts: Dr. Richard Watts, cardiologist, Cleveland
Dr. Jeffrey Ross, internist, Cleveland

Settlement: $475,000.00

Estate of John Doe v. U.S. Air. Inc., et al
Court: District Court, Ohio
Settlement: March, 1994
Plaintiffs Counsel: Jamie Lebovitz, ▼▼ B E R GL,EVIN, HELLER & McCARTHY
Type of Action: Aviation

Crash of U.S. Air Flight 405 on take off from New York's LaGuardia Airport as a result of ice accumulation on wings.

Damages: Wrongful Death

Plaintiffs Expert: Dr. Harvey Rosen, Ph.D.
Dr. Mary Jane Black (Psychologist)
Dr. Yael Crawford (Psychologist)

Settlement: $2,100,000.00

Estate of Jane Doe v. US.Air Inc.. et al
Court: District Court, Ohio
Settlement: May, 1994
Plaintiffs Counsel: Jamie Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Type of Action: Avaiation

Crash of U.S. Air Flight 405 on take off from New York's LaGuardia Airport as a result of ice accumulation on wings.

Damages: Wrongful Death

Plaintiffs Expert: Dr. Harvey Rosen

Settlement: $1,800,000.00

David McGuire, Jr. v. Antonios Bros. Carpet Care
Court: Cuyahoga County Common Pleas
Settlement: May, 1994
Plaintiffs Counsel George E. Loucas
Defendant's Counsel: Michael Curtin
Insurance Company: Meridian Insurance Company
Type of Action: Personal Injury - Motor Vehicle Accident

Plaintiff was riding his motorcycle through an intersection with the right of way when defendant operator of a commercial cleaning van failed to yield, entering the intersection and striking plaintiff and his motorcycle.

Damages: Fractured left tibia with placement of an intramedullary rod and a bent fibula

Plaintiffs Expert: Dr. Robert Zaas

Defendant's Expert: Dr. Richard Kaufman

Settlement: $129,000.00

Erma Lee Dowerv. Exec. v. MetroHealth Medical Center. et al
Court: Cuyahoga County Common Pleas
Settlement: June, 1994
Plaintiffs Counsel: George E. Loucas
Defendant's Counsel: Stephen Walters
Insurance Company: Self-insured
Type of Action: Medial Malpractice

Mr. Dowery suffered hypovolemia (decreased volume of circulating fluid in the body) as a result of an almost 8 hour hip surgery. He was transferred to the medical/surgical floor where he suffered hypovolemic shock and cardiac arrest. He died the next day. Plaintiffalleged failure to timely monitor and assess for a known post-operative complication and failure to notify physicians for intervention, which would have included a blood transfusion.

Damages: Cardiac arrest and death

Plaintiffs Expert: Denise Kresevic, R.N., M.S.N., Cleveland, Ohio
Alfred Behrens, M.D., Orthopedic Surgery, Newark, NJ

Defendants; Expert: Michelle Loach, R.N., M.S.N., Cleveland, Ohio
Dr. Kutaiba Tabbaa, Anesthesiology, Cleveland, Ohio

Settlement: $350,000.00

Estate of John Doe v. Jane Doe Hospital
Court: Cuyahoga County
Settlement: July, 1994
Plaintiffs Counsel: Jamie Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Type of Action: Medical Malpractice

Toxic overdoes of potassium chloride to patient in PICU as a result of post-operative congestive heart failure. Decedent had a life expectancy of approximately 5 years due to complex congenital defects.

Damages: Death

Plaintiffs Expert: Dr. Ira DuBrow

Settlement: $505,500.05

James Lowry **v.** Allegheny Aerial Lift Co.
Court: Trumbull County Common Pleas
Settlement: August, 1994
Plaintiffs Counsel: John D. Liber and Justin F. Madden
Defendant's Counsel: Patrick McLaughlin
Insurance Company: American Guarantee & Liability
Type of Action: Products Liability

Plaintiff was one of three roofers descending from **a** roof in a mobile cherry picker when **it** tipped over, falling ***65*** feet.

Damages: Bruised knee, broken nose

Plaintiffs Expert: Richard Harkness, Ph.D., P.E

Defendant's Expert: Mark Recard, Ph.D.

Settlement: $50,000.00

Danny Miller **v.** Century Steel Erectors. Inc., et al
Court: Trumbull County Common Pleas
Settlement: September, 1994
Plaintiffs Counsel: John D. Liber and Justin F. Madden
Defendant's Counsel: John **A.** Murphy, Jr. and Mary Margaret Hill
Insurance Company: Lloyds of London
Type of Action: Construction Negligence

Plaintiff injured at job site by a steel beam which fell from a single steel choker

Damages: Torn rotator cuff, impaired use of left hand, psychological injuries

Plaintiffs Expert: Cliff Dickinson, Crane Institute of America, Maitland, Florida

Defendant's Expert: None listed

Settlement: $250,000.00

Gail Kaplan Verbitsky, Guardian. et al v. Mt. Sinai Medical Center. et al
Court: Cuyahoga County Common Pleas Court
Settlement: October, 1994, Verdict 12/8/94
Plaintiff's Counset: George Abakumov, Kevin T. Roberts
Defendant's Counsel: Marc Groedel, Patrick Murphy, Joseph Herbert, David Sumner
Insurance Company: Self (Mt. Sinai); PIE (Individual Doctors)
Type of Action: Medical Malpractice

Plaintiff admitted to Mt. Sinai with persistent U.T.I. Discharged without medication despite fever of unknown origin and indications of candida infection; developed fungal meningitis despite outpatient treatment

Damages: Funal meningitis leading to strokes and permanent vegetative state

Plaintiffs Expert: Howard Tucker, M.D. (Neurology)
Neil Crane, M.D. (Infec. Disease)

Defendant's Expert: Gilbert Wise, M.D. (Urology)
Elroy Kursh, M.D. (Urology)
Robert Salata, M.D. (Inf Disease)
Keith Beck, M.D. (Inf Disease)
John Gardner, M.D. (Neurology)

Settlement: $1,250,000.00

Confidential Case Name
Court: Cuyahoga County Common Pleas
Settlement: October, 1994
Plaintiffs Counsel: John D. Liber and Justin F. Madden
Defendant's Counsel: Scott Smith, Robert Monnin, Richard DiLisi
Insurance Company: Chubb Insurance Co.; Confidential.
Type of Action: Products Liability/Premises Liability

Child was not quite two years of age when he pulled a coffee urn full of scalding hot liquid onto himself from a family room counter.

Damages: Second and third degree burns to chest, torso, neck, and left arm

Plaintiffs Expert: Richard Harkness, Ph.D., P.E.
Richard Fratianne, M.D.

Defendant's Expert: Carl Uzgiris; Thomas Heermans; Marilyn Nagy; Greg Miller; Richard Franke, Bruce Rothman, M.D.

Settlement: $325,000.00

James F. Hart. Executor v. Rollings Moving & Storage, et al
Court: Clark County Common Pleas
Settlement: November, 1994
Plaintiffs Counsel: John D. Liber and Robert A. Marcis
Defendant's Ccunse!: John D. Emerich, John E. Gould, Ronald A. Myer, Kenneth R. Beddow
Insurance Company: Not listed
Type of Action: Auto, Negligence

Tractor trailer driver veered left of center striking plaintiff and his decedent's vehicle head OR. Decedent pronounced dead at scene. Plaintiff seriously injured.

Damages: Not Listed

Plaintiffs Expert: John R. Neal, Satellite Beach, Florida
Henry Lipian, Grafton, Ohio

Defendant's Expert: None Listed

Settlement: $1.6 Million

Confidential Case Name
Court: Cuyahoga County Common Pleas
Settlement: November, 1994
Plaintiffs Counsel: John D. Liber and Justin F. Madden
Defendant's Counsel: John D. Campbell
Insurance Company: Not Listed
Type of Action: Premises Liability

Wooden panel of a warehouse overhead door fell off its track, striking plaintiff on the left occipital lobe.

Damages: Not Listed

Plaintiffs Expert: Richard Harkness, Ph.D., P.E

Defendant's Expert: None listed

Settlement: $300,000.00

Holly Bergstrom Executrix v. ABC Medical Center. et al
Court: Cuyahoga County Common Pleas
Settlement: January, 1995
Plaintiff's Counsel: Peter W. Marmaros, Stephen J. Charms, George Novotney
Defendant's Counsel: Stephen Walters
Insurance Company: Self-insured
Type of Action: Medical Malpractice

Plaintiffs decedent was in a severe motorcycle accident resulting in multiple lower extremity fractures, transected aorta, liver lacerations, and mesenteric artery lacerations. He was transferred to a trauma center, operated on, and all trauma injuries repaired. He was left immobile without any surveillance or prophylaxis for the development of deep venous thrombosis or pulmonary embolism for approximately 20 days. The day prior to his death, he had some premonitory signs and symptoms of a PE which were not investigated. He died the following day of massive pulmonary embolism.

Damages: Death

Plaintiffs Expert: John Gone, M.D

Defendant's Expert: James W. Holcroft, M.D

Settlement: $1,100,000.00

Arbera Kuhn. Exec. v. W. Meshginpoosh, M D.. et al
Court: Lake County Common Pleas
Settlement: January, 1995
Plaintiffs Counsel: Larry S. Klein and Stephen J. Charms
Defendant's Counsel: Marc Groedel and David Sumner
Insurance Company: PIE for Dr. Meshginpoosh; N/A for Dr. Liebhart (did not contribute to settlement)
Type of Action: Medical Malpractice
Plaintiff's decedent was admitted to Geneva Memorial Hospital with a heart attack. She came under the care of Dr. Meshginpoosh for five days prior to her discharge. She was inadequately investigated by Dr. Meshginpoosh prior to her discharge. It was plaintiffs contention that his decedent was not sufficiently stable to be discharged from the hospital. Approximately four hours after she left hospital, she died from another acute myocardial infarction.

Damages: Death.

Plaintiffs Expert: Dr. Hogalin

Defendant's Expert: Dr. Michael Hackett
Dr. Bernard Chaitman
Settlement: $350,000.00

Fink **v.** Hernandez. et al
Court: Not Listed
Settlement: January, 1995
Plaintiffs Counsel: Richard D. Goldberg and Stephen J. Charms
Defendant's Counsel: Michael Hudak
Insurance Company: PIE
Type of Action: Medical Malpractice

Plaintiff presented to the defendant internist's office as a 35-year old male with complaints of chest pain. Defendant doctor performed an exercise stress test which was inappropriately performed and inappropriately interpreted. It was, in fact, a positive test. Nitroglycerin was prescribed for chest pain and no consult obtained with a cardiologist. After multiple return visits to the defendant, the plaintiff went on to experience a heart attack and subsequently underwent coronary artery bypass graft surgery.

Damages: Several heart attacks with diminished life capacity

Plaintiffs Expert: Dr. Hogalin

Defendant's Expert: None listed

Settlement: $1,000,000.00

Tavlor. Adm., etc. v. Ohio Dept. of Rehabilitation and Corrections
Court: Franklin County Common Pleas Court
Settlement: March, 1995
Plaintiffs Counsel: John D. Liber and John R. Liber, II.
Defendant's Counsel: Roger W. Carroll and Sally A. Walters
Insurance Company: State of Ohio
Type of Action: Blankenship Intentional Tort

Decedent, a teacher at the Southern Ohio Correctional Facility was brutally murdered by an inmate in the prison school. The trial court found that the history of similar violent episodes, coupled with the complaints from guards and teachers regarding lack of security satisfied the Blankenship standard.

Damages: Death

Plaintiffs Expert: Kenneth Katsaris, Talahassee, Florida
John F. Burke, Jr., Cleveland, Ohio

Defendant's Expert: James Ricketts, Tuscon, Arizona
Ralph Frasca, Dayton, Ohio

Settlement: Judgment: $1,500,000.00; Offer $700,000.00; Demand: $1,000,000.00

Bartolini v. Clark
Court: Cuyahoga county Common Pleas
Settlement: March, 1995
Plaintiffs Counsel: John A. Lancione
Defendant's Counsel: Jeffrey Van Wagner
Insurance Company: Colonial Penn
Type of Action: Intersection Collision

Plaintiff was struck broadside in an intersection by the defendant. Plaintiff received conservative treatment including physical therapy. The pre-existing cervical fusion was not disturbed.

Damages: Plaintiff suffered an aggravation of previous cervical fusion at C6-7 causing increased pain and stiffness.

Plaintiffs Expert: Terrence Isakov, M.D
John Nickles, M.D.

Defendant's Expert: None Listed

Settlement: $60,000.00

Abraham Alston v. Edward Perkins
Court: Lorain County Common Pleas
Settlement: March, 1995
Plaintiff's Counsel: David M. Paris, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: Westfield Ins. Co.
Type of Action: Auto

Plaintiff was a flagman on a road construction crew. The sun temporarily blinded defendant who hit plaintiff at 25 mph.

Damages: Ruptured spleen; lacerated liver; fractured humerus; fractured tibia/fibula.

Plaintiff's Expert: Dr. Robert Buly
Dr. Anthony Smith; Dr.Paul Priebe

Defendant's Expert: None

Settlement: $475,000 00

Christouher Altier, Adm. v. Meridia Euclid Hospital, et al
Court: Cuyahoga County Common Pleas
Settlement: March, 1995
Plaintiffs Counsel: David M. Paris, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Mark Jones
Insurance Company: PIE
Type of Action: Medical Malpractice

Decedent had history of peptic ulcer disease as well as severe CAD and multiple cardiac risk factors. He presented to ER with epigastric pain. Despite an EKG showing nonspecific abnormalities, he was discharged on antacids and died of an acute MI the following morning.

Damages: Wrongful death.

Plaintiffs Expert: Dr. Ken McCarty; Dr. David Cooke

Defendant's Expert: Dr. Donavin Baumgartner; Dr. Ralph Lach

Settlement: $260,000.00

Bailey v. Gilbane Building Company
Court: Cuyahoga County Common Pleas
Settlement: April, 1995
Plaintiffs Counsel: John **A.** Lancione
Defendant's Counsel: Albert Rhoa
Insurance Company: Aetna
Type of Action: Construction site accident

Plaintiff was working in an excavation at a sanitary sewer extension project. A manhole plug blew out of the junction manhole due to the excessive accumulation of water caused by Gilbane Building Company, which was building a prison up stream from the sewer project.

Damages: Mechanical low back syndrome, torn ligament in left wrist, infected laceration right forearm, contusions

Plaintiffs Expert: Chander Kholi, M.D., neurosurgeon
John Biondi, M.D., hand surgeon

Defendant's Expert: Donavin Baumgartner, M.D

Settlement: $80,000.00

Collins v. Kostura
Court: Cuyahoga County Common Pleas
Settlement: April, 1995
Plaintiffs Counsel: John **A.** Lancione
Defendant's Counsel: Timothy McGrail
Insurance Company: Grange
Type of Action: Rear-end collision
Plaintiffs were rear-ended at low speed with minor property damage. The wife became severely depressed **IS** days after the collision. The husband who had been off work for one week before the collision due to back pain from pre-existing herniated discs at L-5, L5-S1 suffered an aggravation of his back injury.

Damages: Wife: Suffered severe clinical depression following collision. Husband: temporary aggravation of pre-existing herniated discs at L-5; L5-S1.

Plaintiffs Expert: Zenos Vangelos, M.D., sports medicine
Robert Weiss, M.D., psychiatrist
Mary Walborn, M.D., internist
Lee Sweeney (L.P.C.C.)

Defendant's Expert: Christopher Layne, Ph.D

Settlement: $60,000.00

Dominic Leto. Adm.. etc. v. Nationwide Mutual Ins. Co.
Court: Cuyahoga County Common Pleas
Settlement: April, 1995
Plaintiffs Counsel: J. Michael Monteleone
Defendant's Counsel: Timothy D. Johnson
Insurance Company: Nationwide Ins. Co.
Type of Action: Automobile/motorcycle Accident

Defendant driver failed to stop at an intersection causing the collision with plaintiff

Damages: Blunt impacts to head, trunk and extremities resulting in death

Plaintiffs Expert: Not Listed

Defendant's Expert: Not Listed

Settlement: $300,000.00

Dwayne Johnson v. MacMillan Bloedel Containers, et al
Court: U.S. District Court, Eastern Division
Settlement: April, 1995
Plaintiff's Counsel: J. Michael Monteleone
Defendant's Counsel: Steven G. Janik and James F. Sweeney
Insurance Company: AIG
Type of Action: Intentional Tort

Plaintiff was told by his employer **to** clean off unguarded print rollers and his hand and arm were pulled in amputation most of his left hand

Damages: Traumatic amputation of four fingers (his thumb remains), requiring surgical procedures

Plaintiffs Expert: Richard VerHalen
Barbara Burk

Defendant's Expert: Harry Smith, Ph.D., Mark A. Anderson, M.D., Albert Karvelis, PH.D., Jack E. Hyde, Jr., and Philip R. Visser

Settlement: $1,050,000.00

Janet Neal v. Cleveland Clinic Foundation
Court: Cuyahoga County Common Pleas
Settlement: May, 1995
Plaintiff's Counsel: John G. Lancione
Defendant's Counsel: George Gore
Insurance Company: Self-insured
Type of Action: Medical Malpractice

Medical malpractice claiming that plaintiffs partial paraplegia resulted from a lumbar puncture in the face of a partial blockage of the spinal canal by a swollen spinal cord.

Damages: Incomplete paraplegia

Plaintiffs Expert: Harold Klawans, M.D., neurologist
Robert Daroff, M.D., neurologist

Defendant's Expert: Robert Herndon, M.D., neurologist
Michael Brant-Zawadzki, M.D., neuroradiologist

Settlement: Judgment: $1,950,000.00, Demand: $2,000,000.00

Lewis E. Lillv Sr.. et al v. Rob Ryan, Inc., et al
Court: Cuyahoga County Common Pleas
Settlement: May, 1995
Plaintiff's Counsel: Robert F. Linton, Jr. and Lewis A. Zipkin
Defendant's Counsel: Joseph Pappalardo
Insurance Company: Motorists Mutual
Type of Action: Auto
Rearend collision. Plaintiff claimed he was permanently disabled. Defendants argued that plaintiffs cervical x-rays showed degenerative conditions rather than cornpression fracture, that there were no objective findings for plaintiffs continued pain and disability, and that he was found to be 65% disabled ten months before the accident due to a Workers' Compensation injury.

Damages: compression fracture C5-C6; aggravated lumbar degenerative disc disease; traumatic inner ear injury resulting in tinnitus.

Plaintiffs Expert:	Dr. Teresa D. Ruch (neurosurgeon), **Dr.** Mark L. Allen (anesthesiologist/pain management specialist), Dr. Bert Brown (otolaryngologist), Dr. Bernard L. Charms (cardiologist/trauma specialist), John F. Burke, Ph.D. (economist)
Defendant's Expert:	Dr. Melvin Shafron (neurosurgeon), Dr. Richard Kaufman (neuro radiologist)

Settlement: $445,000.00

Mark J. Borchik v. Summit County
Court: Summit County Common Pleas
Settlement: May, **1995**
Plaintiffs Counsel: Robert F. Linton, Jr.
Defendant's Counsel: Ronald B. Lee, Moreen O'Conner, Lisa Fromm and Tracey Wertman
Insurance Company: Seif-insured
Type of Action: Road defect

Plaintiff lost control of his vehicle in dip on a county road leading into the Cuyahoga Valley National Park. He was unable to regain control due to an eroded shoulder. He contended that the county failed to fulfill its statutory duty to keep the road and shoulder in repair and free from nuisance, and further failed to maintain reduction in speed and dip warning signs. Defendant contended that the accident was due to plaintiffs medical condition (he had suffered a closed head injury in an accident three weeks earlier and was prescribed Dilantin, an anti-seizure medication), and excessive speed.

Damages: Bursa fracture L-4, treated without surgery and lacerated spleen.

Plaintiffs Expert: Alan Brubaker, P.E. (City of Kent-Municipal Engineer), Hank Lipian (Accident Reconstructionist), Richard D. Raymond, Ph.d. (economist), Dr. Berry Greenberg (Treating Orthopedic Surgeon)

Defendant's Expert: Various Summit County Engineers; Dennis Guenther, S.A.E. (Accident Reconstructionist)

Settlement: $137,500.00

Jane Doe v. Hospital
Court: Cuyahoga County
Settlement: May, 1995
Plaintiff's Counsel: Jamie Lebovitz, B E R GLEVIN, HELLER & McCARTHY
Defendant's Counsel: Gary Goldwasser
Insurance Company: Self-insured
Type of Action: Medical Malpractice

Plaintiff went in for routine colonoscopy and defendant biopsied submucosal lesion and perforated wall of cecum.

Damages: Perforated wall of colon leading to peritonitis.

Plaintiffs Expert: Dr. Mark Rosenberg

Defendant's Expert: None

Settlement: *$500,000.00*

Racy Jean Minerd, Extr., etc. v. The Cleveland Clinic
Court: Cuyahoga county Common Pleas
Settlement: May 26, 1995
Plaintiff's Counsel: William Hawal, Dennis B. Lansdowne
Defendant's Counsel: Gary H. Goldwasser, Alan B. Parker
Insurance Company: Not Listed
Type of Action: Medical malpractice/wrongful death

Decedent was admitted to Cleveland Clinic Drug and Alcohol Recovery Unit for chronic alcoholism. During hospitalization, decedent complained of atypical chest pain which occurred while swallowing. Defendant scheduled decedent for various cardiac tests, but decedent suffered MI the day before.

Damages: Death from myocardial infarction

Plaintiffs Expert: Thomas DeBauche, M.D. - cardiologist

Defendant's Expert: William Bauman, M.D. - cardiologist

Settlement: Judgment: *$757,653.37;* Demand: *$750,000.00*

Richard Smith. et al v. Brown-Minneapolis Tank. et al
Court: Cuyahoga County Common Pleas
Settlement: June, 1995
Plaintiffs Counsel: William Hawal
Defendant's Counsel: Timothy R. Cleary
Insurance Company: Not Listed
Type of Action: Product Liability

Platform of 20 year old aircraft refueling vehicle collapsed due to failure of welds. Alleged defectively manufactured welds. Manufacturer alleged platform altered and damaged by refurbisher in 1990.

Damages: Amputation of left great toe

Plaintiffs Expert: Wade E. Troyer (welding engineer); Lawrence Bilfield, M.D. (orthopedic surgeon)

Defendant's Expert: John Wallace (metallurgist); Malcolm Brahms, M.D. (orthopedic surgeon)

Settlement: Judgment: $220,000.00; Offer: $77,500.00; Demand: $125,000.00

Omar Morales v. Ohio Dept. of Youth Services
Court: Court of Claims, Columbus, Ohio
Settlement: June, 1995
Plaintiff's Counsel: Kent B. Schneider
Defendant's Counsel: Attorney General's Office, State of Ohio
Insurance Company: Not Applicable
Type of Action: Auto

18 year old juvenile offender in custody of the State of Ohio being driven from one location to another when state employee driver negligently overturned the vehicle causing C4/5 quadriplegia.

Damages: C4/5 Quadriplegia

Plaintiff's Expert: Sharon Reavis, Life Care Pian; Dr. Rod Durgin, Vocational; Dr. Robert Kaplan, Psychologist; Dr. Harvey Rosen, Economist.

Defendant's Expert: Angela Suell, Vocational; Susan Smith, Life Care; Gerald Lynch, Economist.

Settlement: $4.6 Million

Kenneth L. Tollev, et al. v. Counts Container Corp., et al.
Court: Cuyahoga County Common Pleas
Judges: Michael Gallagher and Robert Feighan
Settlement: July, 1995
Plaintiffs' Counsel: Richard C. Alkire, Leon M. Plevin, ▼ ▼ B E R GLEVIN, HELLER & McCARTHY CO., L.P.A.
Defendants' Counsel: James Barnhouse, KITCHEN, DEERY & BARNHOUSE
James F. Sweeney, GALLAGHER, SHARP, FULTON & **NORMAN**
Craig A. Marvinney, REMINGER & REMINGER
Orville Reed, BUCKINGHAM, DQOLITTLE & BURROUGHS
Insurance Company: Aetna, USF&G and Home
Type of Action: Product Liability

While at work, an end dump trailer assembled by his employer and made out of various scrap parts descended upon him while he was working underneath it without propping it. He had searched for a prop and could not find one. The body descended because he left the control for the hydraulic cylinder located in the tractor cab in the down position allowing all of the hydraulic fluid to drain from the telescopic cylinder while he was working on the base of the cylinder which could not move because of scrap material impacted around it. This action was brought against East Mfg. Co. (installer of hydraulic controls in the tractor cab), Counts Container (mfr. of dump body sold to employer), Omnisource (seller of scrap trailer frame) and individual owner of assembled trailer, David Sutphin.

Damages: Triplegia (29 year old male).

Plaintiffs' Experts: Simon Tamny, P.E.
John Burke, Ph.D.
Dorene Spak, M. Ed., CRC, LPC, CIRS
Frederick Frost, M.D.

Defendants' Experts: Don Wandling, P.E.
George Rageithorn, P.E

Settlement: $1,210,000.00
$750,000.00 - East
$450,000.00 - Counts
$ 10,000.00 - Omnisource

Hostetler v. Consolidated Rail Corporation
Court: **U.S.** District Court, Northern District
Settlement: August, 1995
Plaintiffs Counsel: Patrick J. Hart
Defendant's Counsel: Philip E. Howes
Insurance Company: Not Applicable
Type of Action: Railroad/car accident

On May 12, 1993, plaintiffwas struck by Conrail train at Conrail railroad crossing at Rohrer Rd (County Rd. 29) in Wayne county, Ohio. Plaintiff alleged that defendant's crossing was extra hazardous and should have had automatic lights and gates to warn motorists of an approaching train.

Damages: Open head injury, brain damage, orthopedic leg fracture of both thigh bones

Plaintiffs Expert: William Berg, P.E

Defendant's Expert: G. Rex Nicholson, P.E.

Settlement: Judgement: $2,400,000.00.; Offer: $150,000.00; Demand: $2,500,000.00

Burnell Phillips v. The Minster Machine Company, et al.
Court: Cuyahoga County Common Pleas
Judges: Norman Fuerst
Settlement: August, 1995
Plaintiffs' Counsel: Richard C. Alkire
B E R GLEVIN, HELLER & McCARTHY CO., L.P.A.
Defendants' Counsel: Brett Bacon, THOMPSON, HINE & FLORY (Minster)
Mark F. McCarthy, ARTER & HADDEN (Kendale)
Insurance Company: Self Insured (Minster) and Aetna (Kendale) on a stop gap endorsement
Type of Action: Product Liability and Employer Intentional Tort

Plaintiff inserted a screwdriver to hold down a palm button so he could use his other hand to thread steel from a steel coil through a progressive die which was affixed to the Minster press. Plaintiff's uncorroborated testimony was that he was instructed to do this. Evidence revealed that a screw driver had been used by others in the past for this purpose without injury. The employer asserted through three independent witnesses that Plaintiff had been instructed not to insert the screwdriver, but seek assistance when a coil ran out.

Damages: Amputation of the left index and little Lingers and wound *to* left hand and forearm of a 24 year old male.

Plaintiffs' Experts: Simon Tamny, P.E.
Rod Durgin, Ph.D.
Michael Keith, M.D.

Defendants' Experts: Larry G. Kontosh, L.P.C., CRC, CVE
William B. Eaton, P.E.

Settlement: $450,000.00

Jane Doe, Dec'd v. John Doe, M.D.
Court: Trumbull County Common Pleas
Settlement: September, 1995
Plaintiffs Counsel: Peter H. Weinberger, Cathleen M. Bolek
Defendant's Counsel: Michael Hudale
Insurance Company: PIE
Type of Action: Medical Malpractice

Failure to diagnose bowei obstruction post hysterectomy resulting in sepsis and coagulapathy from quiescent congenital antiphospholipid autoinunune disorder

Damages: Wrongful death

Plaintiffs Expert: Michael Baggist, M.D.; Michele Petri, M.D.

Defendant's Expert: Susan Cowshock, M.D., John Karlari, M.D.

Settlement: $1,450,000.00

John Doe, Adm v. ABC Lab
Court: Cuyahoga County Common Pleas Court
Settlement: September, 1995
Plaintiffs Counsel: David M. Paris, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Stephen E. Waiters
Insurance Company: Med Pro; Cincinnati
Type of Action: Medical Malpractice

Decedent's 9/89 pap smear was misread by the cytotch and again by the pathologist as part of his 10% QA review. Decedent was correctly diagnosed in 9/91 and died 7/92.

Damages: Wrongful death

Plaintiffs Expert: Ken McCarty, M.D.
John Burke, Ph.D.

Defendant's Expert: None

Settlement: $1,250,000.00