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CLEVELAND ACADEMY OF TRIAL ATTORNEYS NOVEMBER, 1996 NEWSLETTER

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

PRESIDENT'S COLUMN

TORT DEFORM

H.B. ***350*** is no longer the black cloud looming just over the horizon. It is a cold and hard reality which would destroy many of our clients' claims and severely restrict their recovery in all others. For those of you who have had the intestinal fortitude to read this legislation you know that it is a mean spirited insult to those who have already been physically and economically disadvantaged by misconduct. I will not debate the merits of this legislation, for no reasonable debate is possible.

Suffice it to say that we must all endeavor to challenge this draconian legislation as it is clear that many of its provisions cannot withstand constitutional scrutiny. However, it is imperative that we all remain vigilant to ensure that those cases which find their way into the appellate courts are factually compelling. Bad facts make bad law. Be sure to enlist the assistance of the Ohio Academy of Trial Attorneys every step of the way so as to maximize the chances of success. The Ohio Academy is now actively involved in developing constitutionally compelling arguments on all aspects of H.B. 350.

Keep in mind that most of H.B. 350's legislation will become effective on January **26, 1997**. Most attorneys who have studied the legislation are strongly advocating the filing of **all** potential cases prior to that date.

SEMINAR:

CATA and OATL will be co-sponsoring an **"H.B. *350:*** Your Client's Rights After Tort Reform" Seminar on Friday December **20, 1996** at the Hilton Inn South. The seminar will cover all substantive provisions of the statute and will be approved for **6.25** credit hours. A registration form is attached.

NETWORKING:

As I indicated in the last Newsletter the Academy is offering a networking service to its members. Attached to this Newsletter is a special form for networking inquiries to be submitted to David Paris or Paul Wolf.

LUNCHEON SEMINARS:

Our next luncheon seminar is scheduled for Tuesday, December **17, 1997.** Andy Krembs will be speaking on H.B. 350. You will be receiving registration information shortly.

Sincerely,

Bill

William Hawal

EMPLOYER INTENTIONAL TORT - EVIDENCE OF OHSA VIOLATION

Davis v. Sam's Club d.b.a Wal-Mart Stores, Inc., Cuy. Co. App. No. 69647 and 70284 (September 12, 1996). For Plaintiff-Appellee: Jean M. McQuillan and For Defendant-Appellant: Roy A. Hulme and Clifford C. Masch. Opinion by Terrence O'Donnell. Leo Spellacy and Joseph Nahra concur.

Plaintiff's decedent suffered fatal injuries when a produce truck pulled away from a loading dock while the truck was in the process of being unloaded by the decedent. Evidence was admitted at trial that defendant was aware of the precise risk and had circulated a written memorandum outlining a procedure that would alleviate the risk. Moreover, appellant was issued an OHSA violation. After affirming the trial court's ruling that there existed sufficient evidence to permit a trier of fact to find that appellant had committed an intentional tort, the Eighth District Court of Appeals held that while evidence of an OHSA violation does not constitute negligence *per se,* the violation is admissible in evidence for other purposes inasmuch as the probative value of the violation outweighs any risk of unfair prejudice under Ohio Rule of Evidence 403. The Court also held that despite the fact that the last demand prior to the jury's $2,000,000.00 verdict was $250,000.00 in the face of a $150,000.00 offer, the trial judge did not abuse his discretion in awarding prejudgment interest where there existed some evidence of appellant's abuse of discovery and repeated assertions that it would appeal the case to the Ohio Supreme Court should the plaintiff-appellee refuse to accept the $150,000.00 offer.

RELEASE - MUTUAL MISTAKE OF FACT

Lutzick v. Bentzen, Cuy. Co. App. No. 70590 (September 26, 1996). For Plaintiff-Appellant: Paul W. Yates and For Defendant-Appellees: Michael **F.** Cunningham and Marilyn Fagan Damelio. Per Curiam.

The Court held that there existed a genuine issue of material fact as to whether a mutual mistake of fact had occurred between the parties with regard to the extent and

nature of any personal injuries sustained by the plaintiff-appellant so that a release of all claims could be set aside. The rear-end automobile accident occurred on June 2, 1994. The release was executed on June 7, 1994, at a time when plaintiff was aware that he had a stiff neck but did not think that this constituted any injury. The release which was executed provided for payment of $550.00 along with $1,500.00 in available money for any medical bills incurred during the first six months after the accident for treatment of injuries related to the accident. Plaintiff-appellant testified that at the time the Release was executed he had no discussion regarding personal injury with the claims adjuster and that **all** communication between the two was directed solely at property damage.

UNDERINSURED MOTORIST COVERAGE - RAD FAITH

Kehoe v. Lightning Rod Mutual Insurance Company, Cuy. Co. App. No. 70410 (September 26, 1996). For Plaintiff-Appellant: David B. Hare and For Defendant-Appellee: Robert J. Foulds. Per Curiam.

Plaintiff-appellant sustained injury in an automobile accident under circumstances indicating clear liability on the part of the tortfeasor. The tortfeasor's insurer tendered its $50,000.00 policy limit. Pursuant to the authority of McDonald v. Republic-Franklin Insurance Company (1989), 45 Ohio St.3d 27, Lightning Rod, the underinsured carrier, paid this $50,000.00 sum to the insured plaintiff so as to protect its subrogation interests. Lightning Rod then entered the case as a third party plaintiff. The case went to trial and the jury returned a verdict in favor of the plaintiff in the amount of $165,000.00. Lightning Rod had issued a $100,000.00 policy of underinsured motorist coverage to the plaintiff. Lightning Rod, subsequent to the verdict, argued that it owed no sum of money to the plaintiff even though the verdict was $115,000.00 in excess of the tortfeasor's policy limit. Lightning Rod arrived at this position by claiming that since plaintiff did not make it a party-defendant in the case that went to trial, it was under no obligation to pay any sums pursuant to its underinsured coverage. Plaintiff filed a motion with the court requesting both leave to amend his complaint and for a

ruling that Lightning Rod's set-off was from the entire amount of the judgment rather than its underinsured policy limit. (Savoie v. Grange Mutual Insurance Company (1993), 67 Ohio St.3d 500). The trial court permitted plaintiff to amend his Complaint and ruled that a proper application of Savoie mandated that the set-off be from the entire amount of the judgment rather than Lightning Rod's underinsured policy limit. The Court's ruling transpired approximately 11 months subsequent to the jury verdict. Lightning Rod then tendered the undisputed $50,000.00 sum from its $100,000.00 underinsured limit. Lightning Rod then appealed the trial court's application of Savoie. On February 22, 1996, the Eighth District Court of Appeals affirmed the decision of the lower court in Kehoe v. Pline (February 22, 1996), 1996 Ohio App., Lexis 578, Cuy. App. No. 69182, unreported. Plaintiff then filed the instant bad faith action against Lightning Rod for the latter's refusal to pay the undisputed $50,000.00 portion of the underinsured limit for 11 months subsequent to the jury verdict. The Court of Appeals reversed the grant of Summary Judgment in favor of Lightning Rod holding that the clear and unambiguous terms of the underinsured contract bound Lightning Rod to pay up to $100,000.00 for injuries caused by an uninsured motorist. The Court of Appeals stated that where it was undisputed that Lightning Rod was contractually bound to pay at least $50,000.00 to a plaintiff who was underinsured by $115,000.00 and refused to do so for 11 months, a trier of fact could very well determine that Lightning Rod had refused to honor its underinsured obligations without reasonable justification for the refusal.

EXPERT REPORT - ABUSE OF DISCRETION

Booker v. Revco D.S., Inc., Cuy. Co. App. No. 70049 (August 8, 1996). For Plaintiff-Appellant: John E. Duda and Julianne E. Hood and For Defendant-Appellee: Andrew S. Pollis and Steven W. Albert. Per Curiam.

On May 24, 1995, the trial court conducted a case management conference with regard to this slip and fall action. The Court issued a Case Management Conference Order which required provision of plaintiff's expert report by July 3, 1995. A discovery cut-off was set for September 18,

1995, and trial was set for October 5, 1995. On July 18, 1995, plaintiff's counsel filed a motion for enlargement of time until September 1, 1995, to file plaintiff's expert report. This expert report was sent to counsel for defendant on August 7, 1995. Shortly thereafter, the motion for enlargement of time was denied. The Court of Appeals held that where plaintiff's affidavit attached to the motion for enlargement of time stated that the expert's final report would require results from an independent laboratory in order to measure certain forces and that the testing would take sixty days, the plaintiff had provided evidence of "good cause" within the meaning of Local Rule 21.1 so that failure to grant plaintiff's motion for enlargement of time was an abuse of discretion. The Court of Appeals noted that the expert report was only a few days more than one month late and there existed the possibility that the delay might not disrupt the October 5, 1996, trial date.

MEDICAL MALPRACTICE

Czerwinski v. St. Luke's Medical Center, Cuy. Co. App. No. 70032 (July 25, 1996). For Plaintiff-Appellant: Michael Shafran and for Defendants-Appellees: Christine S. Reed, John A. Simon and Patrick J. Murphy. Opinion by Joseph Nahra. Leo Spellacy and Terrence O'Donnell concur.

The trial court's granting of a directed verdict in favor of all defendants was affirmed where plaintiff's medical expert testified that had plaintiff remained hospitalized for an additional three to seven days there would have been a much greater chance that plaintiff would have survived a second heart attack which occurred shortly after his original hospital release resulting from a major myocardial infarction. The Court of Appeals reasoned that such testimony on the issue of proximate causation was insuficient to allow a reasonable jury to find in favor of the plaintiff. The Court of Appeals analyzed the case under Cooper v. Sisters of Charity, Inc. (1971), 27 Ohio St.3d 242, and held that there exists no recovery in a wrongful death action for the loss of a chance of survival. Rather, the court ruled, there must be sufficient evidence to show that with proper diagnosis, treatment, and surgery, the patient probably would have survived. Obviously, this

decision pre-dates the Supreme Court of Ohio case of Roberts v. Ohio Permanente Medical Group, Inc., 76 Ohio St.3d 483 (1996), which effectively overrules Cooper.

SAVOIE AMENDMENTS TO SENATE BILL 20 HELD UNCONSTITUTIONAL

Hillyer v. State Farm Insurance Company, Cuy. Cty. Common Pleas Case No. 290140 (Nov. 12, 1996), Opinion By: Norman A. Fuerst.

Plaintiff was killed when the driver of a vehicle in which she was a passenger lost control and struck a telephone pole. The tortfeasor's liability carrier and plaintiff's underinsured motorist carrier possessed identical limits of coverage. State Farm moved for summary judgment, taking the position that inasmuch as the accident occurred after the effective date of Senate Bill 20, that a provision requiring set-off from the amount of their underinsured limits rather than from the total amount of damages was permissible. Plaintiff filed a cross motion for Summary Judgment alleging constitutional imfirmities with Senate Bill 20. Judge Fuerst held that the Savoie amendments to Senate Bill 20 violated the one subject rule contained in Article 11, Senate 15(D) of the Ohio Constitution and, therefore, that the "Savoie amendments" were to be severed and struck from the remainder of Senate Bill 20. Judge Fuerst also found that the Savoie amendments violated the plaintiff's right to a remedy under the Ohio Constitution.[1]

[1]A copy of Judge Fuerst's Opinion and Order will be provided with this newsletter.

WORKERS COMPENSATION - VOLUNTARY DISMISSAL

Moore, Jr., v. Trimbel and Manfredi Motor Transit Company, Cuy. Co. App. No. 67895 (Aug. 15, 1996). For Plaintiff-Appellant: Harold L. Levey and For Defendant-Appellee: Steven J. Habash and Joseph M. Saadi.

The Court of Appeals held that the trial court had committed prejudicial error in refusing to recognize the claimant's right to voluntarily dismiss a workers' compensation action in the Court of Common Pleas even though it was the employer who appealed the claim to the Court of Common Pleas level. In short, the Court of Appeals did not find merit in the employer's argument that since it filed the Notice of Appeal, the claimant could not, by unilaterally filing a voluntary dismissal, deprive it, as the employer, of the right to appeal the adverse administrative decision.

UNDERINSURED MOTORIST COVERAGE

McDonald v. Nationwide Mutual Insurance Company, Cuy. Co. App. No. 69419 (Aug. 8, 1996). For Plaintiff-Appellant: Kent B. Schneider and Jay S. Salamon; For Defendant-Appellee: Timothy D. Johnson, Gregory E. O'Brien and Daniel A. Richards. Opinion By: Timothy E. McMonagle. Sara J. Harper and Ann Dyke concur.

Plaintiff was divorced from his wife, one Beverly Skelley. The former couple were the parents of Levi McDonald. Levi was killed in an automobile accident caused by the negligence of an underinsured motorist. At the time of the accident plaintiff and Beverly Skelley were not residents of the same household. After settling with the tortfeasor's liability insurance carrier, Skelley and the plaintiff each presented underinsured motorist claims to their insurers, Nationwide and State Farm, respectively. Each policy provided underinsured coverage in the amount of $100,000.00 per person/$300,000.00 per accident. State Farm paid plaintiff the underinsured limits pursuant to his policy. Plaintiff then sought additional underinsured coverage under Skelley's Nationwide policy. The Court of Appeals affirmed the trial court's granting of Summary

Judgment in favor of Nationwide. The Court of Appeals reasoned that inasmuch as plaintiff was not a resident of Skelley's household and was not related to her through blood, marriage or adoption, that he did not qualify as an "insured" under Skelley's Nationwide policy. Because the Court of Appeals determined that plaintiff was not an insured under Skelley's Nationwide policy, he could not access Skelley's underinsured motorist policy with Nationwide. The Court of Appeals refused to find merit in plaintiff-appellant's position that statutory wrongful death beneficiaries may not be excluded from coverage even if they are not defined as insureds under the applicable policy. This latter position has been adopted by the Third and Twelfth Appellate Districts of Ohio. (Dion v. State Farm Mutual Automobile Insurance Company (March 24, 1992), 1992 Ohio App. Lexus 1556, Defiance App. No. 4-91-14, unreported and Lynch v. State Farm Mutual Automobile Insurance Cbmpany (March 21, 1994), 1994 Ohio App. Lexus 1129, Butler App. No. CA-93-06-099, unreported).

STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	) SS:	
COUNTY OF CUYAHOGA	)	CASE NO. 290140

MARTIN HILLYER, et al.	)	
	)	
Plaintiffs	)	
	)	
vs.		OPINION AND ORDER
	)	
STATE FARM INSURANCE COMPANY	)	
	)	
	)	
Defendant	)	

Norman A. Fuerst, J.:

This case is now before the Court on Plaintiffs' Motion for Declaratory Judgment and Defendant's Motion for Summary Judgment. Since there is no genuine dispute as to any material fact, *the* Court will treat the parties' motions *as* crass-Motions for Summary Judgment. The Court finds chat Plaintiffs *are* entitled to judgment as a matter of law and therefore Plaintiffs' Motion is GRANTED and Defendant's Motion is DENIED.

On November 8, 1994, decedent Christina Hillyer, a passenger in a vehicle operated by Karen Snyder, was killed when Snyder lost control of the vehicle and struck a telephone pole, Plaintiff, Martin Hillyer, as the administrator of the Estate of Christina Hillyer, brought this action against Defendant State Farm, the Hillyer's uninsured/underinsured motorist carrier. This insurance policy has the same liability limits as the policy of the tortfeasor, Karen Snyder, Under the current version of RC §3937.18, as amended by Senate Bill 20 ("SB-20"), effective October 20, 1994, Plaintiffs are not entitled to any recovery above and beyond what was received from

the tortfeasor, Karen Snyder's, insurance policy, This is because *the* amended provisions of RC §3937.18 permit State Farm to include, in its uninsured/underinsured policies, language which provides for the set off of its policy limits against the policy limits of the tortfeasor. The General Assembly enacted the SB-20 amendments to RC 83937.18 with the specific intent to supersede the effect of *Savoie v. Grange Mutual Insurance Co.* (1993), 67 Ohio St. 3d *500. Savoie* held, in relevant part, that (1) injured underinsured motorists may collect up to the limits of their uninsured/underinsured policies to the extent that their damages exceed the tortfeasor's policy limits; (2) insurers cannot prohibit inter-family stacking; and (3) insurers cannot consolidate the claims of multiple claimants into one "per person" limit. Id, at 508. Plaintiffs raise various constitutional challenges to SB-20, which are considered below.

I, One Subject Rule/Logrolling

Plaintiff contends that in enacting SB-20, the General Assembly violated the one-subject rule contained in Article 11, Section 15(D), of the Ohio Constitution, The primary and universally recognized purpose of this rule is to prevent logrolling -- the practice of combining several proposals as different provisions of a single bill so that a majority is obtained for the bill where perhaps no single proposal could have obtained approval separately. *State ex ret. Dix v, Celeste* (1984), 11 Ohio St. 3d 141, 142-143. The one subject rule also has the related benefit of preventing "riders" from being attached to bills that are so certain of adoption that the rider will not be adopted on its own merits, but on the strength of the measure to which it is attached. Id, at 143. Ohio law has long recognized that one of the purposes of this rule is to provide for a fair legislative process, *Id.* While a technical violation of the one-subject rule will not necessarily be fatal to the legislation, the courts wilt not abdicate their duty to enforce the Constitution, and will

therefore hold enactments invalid whenever there is a "gross and fraudulent violation" of the rule. *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St. 3d 225, 229.

In the case at bar, SB-20 was introduced in January 1993 in the Ohio Senate for the original purpose of amending the Financial Responsibility Law; no mention was made of amending RC §3937.18. On May 12, 1993, SB-20 was voted on and passed by the Senate. Several amendments were added after the bill's introduction, but none *dealt* with RC §3937.18 or *Savoie* issues. On May 13, 1993, SB-20 was introduced into the House of Representatives, which conducted hearings from June 3, 1993 to May 11, 1994. *Savoie* was decided on October 1, 1993, midway through this period.

An unsuccessful attempt to persuade the legislature to supersede *Savoie* was made in January 1994 by the introduction of an amendment to SB-89, a bill proposing amendments to laws concerning the Ohio Insurance Guarantee Association. Subsequently, turning to the House and SB-20, there was testimony on May 17, 1994, and for the first time in SB-20 hearings, of the need to supersede *Savoie*. No amendment was offered. One week later, on May 24, 1994, an amendment intended to supersede *Savoie* was introduced. No opponent testimony was allowed after the *Savoie* amendment was offered, and the bill was approved by *the* committee. SB-20 passed the House on May 26, 1994, two days later, with no floor discussions allowed by the speaker, The bill was then sent to a joint conference committee, which met on June 27, 1994. Opposition testimony was allowed at this hearing, for the first time since the introduction of SB-20 in January 1993. The bill was passed, again within two days, on June 28, 1994, Governor Voinovich signed SB-20 on July 21, 1994.

Upon a careful review of the parties submitted materials and of the relevant case law, the Court finds a gross and fraudulent violation of the one-subject rule. While the Court recognizes the need to give the General Assembly great latitude in enacting comprehensive legislation, this Court cannot abdicate its duty to enforce the Constitution and the Constitution's purpose of providing for a fair legislative process. The Court finds no common purpose or relationship between the *Savoie* (RC §3937.18) provisions of SB-20 and the bill's other two provisions. Saying that the provisions all relate to "insurance" is no more persuasive than saying the provisions in *State ex rel. Ohio AFL-CIO v. Voinovich, supra,* all relate to "workers." Particularly troubling to the Court is the fact that amendments intended to supersede an important Ohio Supreme Court opinion were introduced at the very end of the legislative session with very little debate and even less public scrutiny. Such conduct threatens our system of representative democracy, and as a matter of public policy cannot be permitted to occur. Accordingly, the Court finds that the enactment of SB-20 violated Article II, Section 15(D) of the Ohio Constitution.

The Court will next consider the proper remedy. The Court agrees that the test in *Hinkle v. Franklin County Board of Elections* (1991), 62 Ohio St. 3d 145, is difficult to apply and should be revisited; however, this Court is bound by *Hinkle* and must follow it. In the case at bar, the Court severs the offending *Savoie* amendments to R.C. §3937.18 and finds them to be invalid. The rest of the provisions of SB-20 are to remain in full force and effect.

II. Due Process/Right to Remedy

In addition to the aforementioned violation of the one-subject rule, the Court further finds that the *Savoie* amendments to RC 3937.18 violate due process and the right to a remedy. Section

16, Article I, of the Ohio Constitution provides that "every person who sustains a legal injury 'shall have remedy by due course of law'." *Sorrell v. Thevenir* (1994), 69 Ohio St. 3d 415, 422. "Due course of law" is equivalent to "due process of law." Id. When the Constitution speaks of remedy and legal injury, it requires that the remedy be granted at a meaningful time and in a meaningful manner. Id. at 426. All the SB-20 amendments relating to *Savoie* issues (consideration of damages of multiple claimants into one "each person" policy limit; prohibition of inter-family stacking; and set off of underinsured motorist policy limits against the limits of the tortfeasor) deny to Plaintiffs, and to all policyholders, their right to a meaningful remedy by due course of law.

All legislative enactments enjoy a presumption of constitutionality. *Sedar v. Knowlton Construction Co.* (1990), 49 Ohio St. 3d 193, The courts, however, are the final recourse for those who have had their rights infringed upon by local or state legislatures, and courts cannot ignore this responsibility by placing undue emphasis on the presumption of constitutionality. In consideration of the issues presented in the case at bar, it is apparent that the vast majority of policyholders, regardless of their level of education, simply do not understand what is and is not covered by their insurance policies, This is especially true in the area of underinsured motorist coverage, which is sold under the premise that it will provide coverage for the insured if the tortfeasor does not have enough insurance. However, when it comes time to pay the claim, the insured is informed that the tortfeasor is only "underinsured" if the liability limits are less than the insured's limits. This is contrary to common usage, where the prefix "under-" means "...(c) to a degree; extent, or amount that is ...inadequate[.]" Webster's New Twentieth Century Dictionary, Second Edition, 1983. An "underinsured motorist," therefore, is an individual having

an inadequate amount of insurance to pay the insured's damages, In fight of the above, the Court finds that the General Assembly has sanctioned an unfair, deceptive, and unconscionable practice which allows for the collection of multiple premiums for multiple policies while limiting recovery by exclusionary language, "the import of which is not known until tragedy strikes." *Savoie*, 67 Ohio St. 3d at *505*. The Court further finds that provisions permitting the prohibition of inter-family stacking, and allowing for the consolation of the damages of multiple claimants into one "per-person" limit, are equally unconscionable. See *Id.*, at 507.

Accordingly; this Court holds that the *Savoie* amendments to SB-20 deny Plaintiffs, and all policyholders, due process of law and further deny them their right to a remedy by prohibiting them from enforcing their insurance contracts to obtain the benefit of their bargain with their insurers,[1]

III. Other Constitutional Issues

Given the above findings, it is not necessary to decide the other constitutional issues raised in Plaintiffs' brief,

IV. Conclusion

For the foregoing reasons, Plaintiffs' Motion is GRANTED and Defendant's Motion is DENIED. The Court finds that following sections of the Ohio Revised Code as amended by SB-20 to be unconstitutional and therefore invalid: RC §3937.18(A)(2); RC §3937.18(G); and RC §3937.18(H). All other sections amended by SB-20 are to remain in full force and effect. Costs

[1] *See* also, *Sorrell*, *69* Ohio St. 3d *at* 424, where the Court found persuasive the argument that no double recovery from a tortfeasor occurs in the typical tort case involving collateral benefits since the supposed double recovery is merely the plaintiff's benefit of his bargain with his own insurance *company*.

are taxed to Defendant. The Court further finds the Plaintiffs are entitled to damages of $300,000 and costs.

IT IS SO ORDERED.

Norman A. Fuerst
NORMAN A. FUERST, JUDGE

DATE: 11/2/96 1996

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VERDICTS AND SETTLEMENTS

Jane Doe v. In-Towne Delivery
Court and Judge: Cuyahoga County Common Pleas; Judge Celebrezze
Settlement: December, 1995
Plaintiffs Counsel: Michael W. Czack, DONALD E. CARAVONA & ASSOCIATES
Defendant's Counsel: Thomas Wright
Insurance Company: Amerisure Insurance Co.
Type of Action: Two-Car Head-On Collision.

Plaintiff was struck head-on by defendant driver who crossed the center line.

Damages: Fractured ankle and sternum, multiple contusions and abrasions, post-traumatic sympathetic dystrophy of right foot.

Plaintiffs Experts: Michael Moore, M.D. (orthopedic); Robert Zaas, M.D. (orthopedic)
Defendant's Experts: Not Listed
Settlement: $260,000.00

Chuck Reardon, et al v. David Hite
Court and Judge: Lake County Common Pleas Court; Judge Parks
Settlement: January, 1996
Plaintiffs Counsel: Bob Rutter and Bob Housel
Defendant's Counsel: Marty Murphy
Insurance Company: Westfield and State Farm
Type of Action: Van roll over with plaintiff as passenger and defendant as driver

Plaintiff was a passenger in a van being driven by the defendant during a church sponsored outing to Yellowstone Park. Defendant did not see a car passing the van and started to change lanes. He then swerved back into his lane, lost control, went off the road, and rolled the van over.

Damages: Compression fracture of T-11 vertebral body with bone fragment impinging on spinal canal and causing spinal cord compression.
Plaintiffs Experts: Dr. Edward Gabelman; Dr. Harold Mars; Dr. David Thomas
Defendant's Experts: Dr. Robert Zaas
Settlement: Judgment, $500,000.00; offer, $250,000.00; demand, $550,000.00; Settlement, $585,000.00.

Stephen **A.** Zifcak v. National City Bank, et al
Court and Judge: Federal Dist. Ct.; Judge George W. White
Settlement: March, 1996
Plaintiffs Counsel: Ellen S. Simon
Defendant's Counsel: Charles J. French, 111.
Insurance Company: Not Listed
Type of Action: Age Discrimination

Plaintiff was told that his position was eliminated in a downsizing program. He was 59 yrs. old at the time and had worked for National City for 20 years with excellent reviews. He was replaced by a 34 yr. old employee. The head of the trust department eliminated several older long term managers, including Mr. Zifcak, stating that he "had to make room for younger people." The defendant claimed that Mr. Zifcak did not have the computer skills for the newly created position after the downsizing.

Damages: Age Discrimination
Plaintiffs Experts: John Burke, Ph.D. (economist)
Defendant's Experts: None
Settlement: Judgment, $1,115,000.00; Offer, $250,000.00; Demand, $750,000.00

Harral v. Fantozzi
Court and Judge: Cuyahoga County Common Pleas; Judge Daniel Gaul
Settlement: June, 1996; September, 1996, respectively
Plaintiffs Counsel: Debra J. Dixon
Defendant's Counsel: Lynn Lazzaro
Insurance Company: Tortfeasor - State Farm; Uninsured Motorist - Grange
Type of Action: Automobile Accident.

Plaintiff rear-ended by defendant's vehicle. Approximately $800.00 in property damage.

Damages: Avulsion fracture of cervical spine vertebrae with subsequent surgical removal of previously placed and unrelated Harrington rod.
Plaintiffs Experts: Louis Keppler, Jr., M.D.
Defendant's Experts: None
Settlement: $95,000.00 (tortfeasor); $32,000.00 (UM carrier)

Fradette, et al v. O'Connor
Court and Judge: Cuyahoga County Common Pleas; Judge Norman Fuerst
Settlement: June, 1996
Plaintiffs Counsel: Daniel J. Klonowski
Defendant's Counsel: Johanna Sfiscko
Insurance Company: Erie Insurance Co.
Type of Action: Motor Vehicle Accident.

Defendant failed to yield to plaintiff, turning left into his path.

Damages: Fracture left tibia; fracture left tibial plateau; laceration patellar tendon; partial laceration anterior cruciate ligament; and fracture left patella.
Plaintiffs Experts: Michael A. LoPresti, M.D.
Defendant's Experts: Dennis B. Brooks, M.D.
Settlement: $240,000.00 ($250,000.00 limits)

Heidi Jackson v. Jae Willis. et al
Court and Judge: Cuyahoga County Common Pleas Court; Judge Daniel Gaul
Settlement: July, 1996
Plaintiffs Counsel: Donald E. Caravona & Daniel Scott Kalish, DONALD E. CARAVONA & ASSOCIATES
Defendant's Counsel: James Glowacki
Insurance Company: General Accident Insurance
Type of Action: Automobile Accident.

Intersection accident where defendant ran stop sign striking plaintiffs vehicle. Plaintiff was **a** passenger in the vehicle. Defendant, Jae Willis, was driver and mother, Cheryl Willis, was owner of the vehicle. Plaintiff alleged and proved negligent entrustment on behalf of the mother, who resided in a different household.

Damages: TMJ with cervical myofascitis, surgery performed on jaw for bite malocclusion, not TMJ surgery.
Plaintiffs Experts: Dr. Harold Mars (neurologist); Dr. Michael Hauser (oral surgeon); Dr. Robert Zaas (orthopedics); and Dr. Jeffrey Dworkin (orthodontist).
Defendant's Experts: Dr. Ronald Bell (oral surgeon)
Settlement: Judgment, $285,000.00 + attorney fees and prejudgment interest from 1988; Offer, $30,000.00; Settlement: Confidential at Insurance Company's request.

John Doe v. Dr. John Doe and ABC Hospital
Court and Judge: Cuyahoga County Common Pleas Court; Judge McGinty
Settlement: July, 1996
Plaintiffs Counsel: Donald E. Caravona and Michael W. Czack, DONALD E. CARAVONA & ASSOCIATES
Defendant's Counsel: Not Listed
Insurance Company: Self-Insured and Medical Protective Insurance
Type of Action: Medical Malpractice.

Plaintiff, a 45 year old warehouseman, had outpatient sinus laser surgery done by defendant doctor at defendant hospital. During the procedure, and complete unbeknownst to defendant doctor, the patient's brain was penetrated. The surgery was completed and the patient was sent home. The error was not discovered until three (3) days later when the pathology report showed brain tissue in the surgical specimen. The plaintiff was immediately rushed to the Cleveland Clinic Foundation for follow-up surgical and rehabilitative care.

Damages: Plaintiff John Doe suffered permanent neural and cognitive deficits as a result of frontal lobe damage. Plaintiff, who is no longer employable, was earning approximately $20,000.00/yr.
Plaintiffs Experts: H. John Jacob, M.D. (otolaryngology); Joseph Spoonster, M.S. (vocational); John Burke, Ph.D. (economist); James Mack, Ph.D. (neuropsychologist)
Defendant's Experts: None
Settlement: $2,500,000.00

Carolyn Ann Okorn v. Gould Instrument Systems. Inc.. et al
Court and Judge: Cuyahoga County; Judge Pat Kelly
Settlement: July 26, 1996
Plaintiffs Counsel: Ellen **S.** Simon and Christopher P. Thorman
Defendant's Counsel: George **S.** Coakley
Insurance Company: Not Listed
Type of Action: Sexual Harassment

Ms. Okorn was harassed and physically intimidated by a co-worker over a three year period. Defendants failed to investigate her numerous complaints and/or discipline the co-worker who had physically threatened other workers and generally was regarded as intimidating.

Damages: Pain and suffering, psychological and other compensatory damages.
Plaintiffs Experts: Thomas Young (Human Resources Expert)
Defendant's Experts: None
Settlement: Judgment, $500,000.00; Offer, $140,000.00 w/confidentiality agreement; Demand, $150,000.00.

Mitchell Hatfield, Adm. etc. v. Central Ohio Coal Co.
Court and Judge: Muskingum County, Judge Wolf
Settlement: September, 1996
Plaintiffs Counsel: William Hawal and Peter H. Weinberger, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Scott Eickelberg and Michael Ryan
Insurance Company: N/A
Type of Action: Auto - head on collision

Pick-up went left of center to avoid colliding with disabled vehicle partially in his lane at night. Claimed vehicle rolled out in front of him from driveway.

Damages: Wrongful death
Plaintiffs Experts: Henry Lipian
Defendant's Experts: Erich Phillips, Ph.D. (visibility); David Warshaw (accident reconstruction)
Settlement: Judgment, *$575,000.00;* offer, $200,000.00; Demand, $400,000.

Sommer, et al v. Berg
Court and Judge: Cuyahoga County Common Pleas; Judge Robert Lawther
Settlement: September, 1996
Plaintiffs Counsel: Debra J. Dixon
Defendant's Counsel: Jan Roller
Insurance Company: Westfield Insurance
Type of Action: Motor Vehicle.

Red light/green light disputed liability. Plaintiff obtained directed verdict on liability at time of trial.

Damages: Fractured patella, fractured sternum and neck/back soft tissue injuries.
Plaintiffs Experts: Kenneth Chapman, M.D.; Paul Venizelos, M.D.
Defendant's Experts: None
Settlement: Judgment, *$75,000.00;* offer, $21,000.00; demand, $43,000.00.

Estate of John Majoros v. William Magee
Court and Judge: Cuyahoga County Common Pleas; Judge Daniel O. Corrigan
Settlement: October, 1996
Plaintiffs Counsel: Donald E. Caravona, DONALD E. CARAVONA & ASSOCIATES
Defendant's Counsel: James F. Sweeney
Insurance Company: Continental Loss Adjusting
Type of Action: Motor Vehicle Accident.

Plaintiff was on a motorcycle on Garfield Boulevard when defendant exited East 90th Street into the plaintiffs path.

Damages: Death
Plaintiffs Experts: Dennis Toaspern (accident reconstruction)
Defendant's Experts: David Urich (accident reconstruction)
Settlement: $300,000.00 (policy limits)

Edward Satterfield. Exec. v. James Ashe. Gravel. M.D.
Court and Judge: Cuyahoga County Common Pleas; Judge James Kilbane
Settlement: October, 1996
Plaintiffs Counsel: Charles Kampinski and Christopher Mellina
Defendant's Counsel: Robert Warner and Steve Walters
Insurance Company: Medical Protective
Type of Action: Medical Malpractice.

On October 1, 1996, a jury returned a verdict in favor of the plaintiff for $1,542,778.02 for the pain and suffering and wrongful death of his 72 year old wife. The decedent had treated with the defendant doctor for 13 years.

In 1990, a CT scan of decedent's chest showed a 4 cm aneurysm in an aberrant right subclavian artery. The defendant did nothing about the aneurysm and did not even inform the decedent of the aneurysm In April and June of 1994, the decedent had episodes of upper G.I. bleeding and was hospitalized. **A** diagnosis of gastric ulcers was made.

Decedent died during the second hospitalization and on autopsy it was discovered that the aneurysm had eroded through her esophagus and ruptured. Decedent was a 72 year old housewife who is survived by her husband, 4 adult children, 4 grandchildren and 2 great grandchildren.

The defendant admitted he should have referred decedent to a cardiothoracic surgeon in 1990 but contended that a second aneurysm arose in her aortic arch and resulted in her death rather than the aneurysm of the right subclavian.

Damages: Pain and suffering and death.
Plaintiffs Experts: Robert Szarnicki, M.D. (CT surgeon - San Francisco); John Burke, Ph.D. (economist),
Defendant's Experts: Norman Snow, M.D. (CT surgeon - Cleveland)
Settlement: Judgment, $1,542,778.02; offer, $300,000.00; verdict paid; demand, $1,000,000.00 - amount of the defendant's coverage.

Jane Doe v. L. Fine. M.D.. M. Howard. M.D.. et al
Court and Judge: Cuyahoga County Common Pleas; Judge Character
Settlement: October, 1996
Plaintiffs Counsel: William Hawal and Peter Weinberger, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Patrick J. Murphy, John Jeffers, Donald Switzer
Insurance Company: PIE/St. Paul
Type of Action: Medical Malpractice

Patient developed pulmonary embolus 6 days post-op cervical laminectomy and was started on Heparin IV. Patient began experiencing excruciating neck pain and neurologic symptoms which continued for **8** hours. Physician ordered narcotic meds by phone while plaintiffs expanding epidural hematoma caused cord compression.

Damages: C-4 quadriplegic (incomplete)
Plaintiffs Experts: Alan de Lotbiniere, M.D. (neurosurgeon)
Defendant's Experts: Jeff Jacobson, M.D., Carole Miller, M.D., Gary L. Rea, M.D. (neurosurgeons)
Settlement: $8,500,000.00

Confidential
Court and Judge: Cuyahoga County Common Pleas; Judge Character
Settlement: November, 1996
Plaintiffs Counsel: William Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY CO., L.P.A. and Julian Cohen, COHEN & STEINBERG
Defendant's Counsel: Anna Carulis and Jeff Van Wagner
Insurance Company: PIE
Type of Action: Medical Malpractice

Plaintiff admitted to hospital with diagnosed disc herniation and substantial pain. Neurological problems progressed and were ignored by defendant. After **6** days, surgery done and plaintiff was diagnosed with cauda equine syndrome.

Damages: Neurological damage to lower extremities, including bladder and sexual dysfunction.
Plaintiffs Experts: R. Bartnick (neurosurgery); B. Feree (orthopedics); J. Markis (cardiology); H. Mars (neurology); J. Chue (physical medicine and rehabilitation); S. Reavis (Life Care Planner); J. Spirnak (urology); B. Fierman (psychology); and R. Durgin (vocational)
Defendant's Experts: Thomas Flynn (neurosurgery); and J. Kostick (orthopedics)
Settlement: $2,300,000.00