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CLEVELAND ACADEMY OF TRIAL ATTORNEYS SEPTEMBER, 1996 NEWSLETTER

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PRESIDENT'S COLUMN

As I write this column tort reform in Ohio has not yet passed, but remains a distinct and continued threat. The relentless efforts of the business and insurance lobby emphasize the enormous importance of the upcoming elections. Several critical Supreme Court races should be the focus of our immediate attention. In addition to continued financial support to candidates, we must inform our clients that their votes will make a difference. You need look no farther than the landmark case of ***Roberts*** v. *Ohio* ***Permanente Medical Group,*** *Inc.* (1996), ***76*** Ohio St.3d 483 to determine this Court's favorable impact upon our clients' rights.

NETWORKING:

As a supplement to CATA's expert bank, we will be expanding our Newsletter by offering a networking opportunity to the Academy membership. Inquiries concerning expert witnesses, defendants, products, etc. will be included in the Newsletter for circulation to our members for their response. Inquires should be submitted directly to our co-editors David Paris or Paul Wolf.

LUNCHEON SEMINARS:

Jean McQuillan, chairperson of our luncheon seminar series, has discovered that our fine city has come a long way in recent years. The banquet facilities in each of our downtown hotels are booked solid until December. Accordingly, our first luncheon seminar will be held on December 3, 1996. Further details will be forthcoming.

I want to thank our immediate Past-President, David W. Goldense (Golf Outing Chairman Emeritus), for another outstanding golf and tennis outing at Spring Valley Country Club. The outing was well attended and, from what I could tell, a good time was had by all.

The Academy is proud to co-sponsor the Tenth Annual Holiday No-Dinner Dance which will be held on Saturday,

November 23, 1996. This event is always a good time and should be enthusiastically supported by all. We will again be sponsoring attendance by our local judiciary.

Sincerely,

Bill

William Hawal

EMPLOYEE RELATIONS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Kovacs v. Joseph A. Bauer, Jr., M.D., et al., (Cuy. Co. App. No. 69400) July 3, 1996. For Plaintiffs-Appellants: Louis G. Henderson. For Defendant-Appellee Dr. Bauer: Patrick Murphy and For Defendants-Appellees A.D.T. and Barry Kinney: Gary W. Johnson. Opinion by: Patricia Ann Blackmon. Leo Spellacy concurs. James J. Porter dissents.

After utilizing her maternity leave for the birth of her child, plaintiff developed a recto-vaginal fistula. Plaintiff's treating physician informed plaintiff that her condition would require surgery and a subsequent seven week period of convalescence. Accordingly, plaintiff applied for disability benefits with her employer. The general manager of plaintiff's employer approved the application for benefits but then insisted that plaintiff undergo an examination by a physician of the employer's choice for purposes of determining whether surgery was indicated. Plaintiff's treating physician informed plaintiff not to undergo a second opinion because the examination procedure could cause a recurrence of the recto-vaginal fistula. When plaintiff informed her manager that she would forego the disability benefits so long as she did not have to undergo the examination by the employer's physician, plaintiff was informed by the manager that this was not "an option." Fearing for her job, plaintiff underwent the examination and subsequently suffered a recurrence of her recto-vaginal fistula, thus requiring additional surgery. The trial court granted summary judgment in favor of the defendants on plaintiff's claim for intentional infliction of emotional distress. The Court of Appeals reversed finding that a reasonable trier of fact could, under the circumstances of the case, find that the employer's manager, acting within the course and scope of his employment, placed the plaintiff in a position where she was forced to choose either her job or her health; a Hobson's choice sufficient to meet the elements of the tort of intentional infliction of emotional distress.

EVIDENCE - PERMISSIBLE CLOSING ARGUMENT

DiPasqua, Jr., v. Knap, (Cuy. Co. App. No. 69998) June 13, 1996. For Plaintiff-Appellant: Joel Nash and For Defendant: James M. Johnson.[1] Per curiam.

The Court of Appeals found the following comments with regard to plaintiff's treating medical expert, Richard Kaufman, M.D., to be within the bounds of permissible closing argument:

"now we come to Dr. Kaufman. Mr. Nash mentioned that our firm has used him in the past, and we have used him in the past. And I will tell you the reason that we have used him in the past is because I know he will say whatever I want him to say.'"

The Court reasoned that plaintiff's counsel had opened the door during his closing argument by informing the jury that Dr. Kaufman had been utilized by defense counsel on previous occasions.

MEDICAL MALPRACTICE - EXPERT WITNESS REQUIREMENT

Palmieri v. Deaconess Hospital, (Cuy. Co. App. Case No. 70067) June 13, 1996. For Plaintiff-Appellant: William J. Novak and Peter C. Tucker. For Defendant-Appellee: Dale E. Markworth. Per curiam.

The Court of Appeals ruled that the placement of a naso-gastric tube into the lung rather than stomach of the plaintiff was not a sufficiently obvious deviation from the standard of care so as to obviate the general requirement of expert testimony in setting forth the requisite standard of care and skill. An additional factor in the case was the provision by defendant of an expert report which stated that

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[1]Mr. Johnson is employed by Keller & Curtin Co., L.P.A.

the placement of the naso-gastric tube inside plaintiff was performed according to the recognized standard of the medical community and no injury was caused to the patient by the procedure. The Court further commented that while it could state no general rule as to when a deviation from the standard of care was sufficiently obvious to lay people so as to obviate the need for expert testimony, it noted that the cases which do eliminate the requirement deal with instances of gross inattention to plaintiff's needs when it is obvious that plaintiff needed attention.

FELLOW-EMPLOYEE IMMUNITY

LaCava v. Walton (Cuy. Co. App. 69190), June 13, 1996. For Plaintiff-Appellant: Roger M. Synenberg and Mary Jo Tipping. For Defendants-Appellees: Robert Davis, G. Michael Curtin and Philip A. Kuri. Opinion by David T. Matia. Sara Harper and Ann Dyke concur.

Plaintiff filed intentional tort claims against a fellow employee. The plaintiff also filed a workers' compensation claim stemming from the injuries he received in the incident. The Industrial Commission allowed the claim thus finding that the injury was sustained in the course and arising out of employment. The trial court granted Defendant's Motion for Summary Judgment based upon Ohio Revised Code Section 4123.741, the fellow-employee immunity statute. This statute provides immunity for fellow employees who cause injury to another employee in the course of and arising out of the latter employee's employment. The Court of Appeals reversed, holding that the statute does not apply to intentional torts committed by the fellow employee because such tortious conduct can never arise out of the course and scope of employment. The Court of Appeals, citing to Jones v. V.I.P. Development Company (1984), 15 Ohio St.3d 90, stated that the fact that the claimant had received workers' compensation benefits is inconsequential.

DUTY TO PROTECT AGAINST UNREASONABLE RISK OF HARM

Jackson, Jr. v. Forest City Enterprises (Cuy. Co. App. No. 69793). May 23, 1996. For Plaintiff-Appellant: Allen I. Goodman. For Defendant-Appellee: James L. McCrystal and Mary Margaret Hill.

Plaintiff slipped and fell as he boarded an escalator. At the time that plaintiff fell upon the escalator there were three security guards who were employees or agents of Tower City who witnessed the fall but did not turn off the escalator. The escalator continued to move with the plaintiff in a prone position thereon. The continued movement of the escalator caused the plaintiff injury. The trial court granted Summary Judgment. The Court of Appeals reversed. The Court of Appeals recognized that ordinarily an individual possesses no duty to act affirmatively for the protection of others. Moreover, the fact that harm to another is foreseeable as a result of a failure to act does not create a duty to prevent harm. However, the Court of Appeals also recognized that an affirmative duty to act for the protection of others may arise where there exists a special and definite relationship between the parties. In the case at bar, the Court of Appeals found that there existed a genuine issue of material fact as to whether the defendant possessed the special relationship of either common carrier or a landowner as to the plaintiff. If so, there existed a genuine issue of material fact as to whether, under the special relationship, defendant breached its duty to protect its passenger or business invitee from an unreasonable risk of harm.

UNDERINSURED MOTORIST COVERAGE - ANTI-STACKING PROVISION

Molek v. State Farm Mutual Automobile Insurance Company (Cuy. Co. App. No. 69480). May 23, 1996. For Plaintiffs-Appellants: Joseph L. Coticchia. For Defendant-Appellee: Henry A. Hentemann and Michael J. Creagan. Opinion by Patricia Ann Blackmon. Terence O'Donnell and John Patton concur.

Plaintiff suffered severe brain damage as a result of an accident with an underinsured tortfeasor. Tortfeasor's

carrier paid the per person limit of $12,500.00. Plaintiff's underinsured carrier, State Farm, paid plaintiff the $100,000.00 per person limit. Subsequently plaintiff filed a Complaint for Declaratory Judgment seeking to recover the remaining $200,000.00 in "per accident" insurance coverage. Plaintiff's theory was that his wife and daughter each possessed separate claims for loss of consortium, each of which claims were entitled to their own $100,000.00 per person limit up to the remaining $200,000.00 in "per accident" coverage. The trial court granted Defendant's Motion for Summary Judgment. The Court of Appeals affirmed finding that Dues v. Hodge (1988), 36 Ohio St.3d 46, which upheld a nearly identical anti-stacking policy provision as that contained in defendant's policy, was controlling despite being disapproved of and partially overruled in the Savoie decision. The Court of Appeals found that the Savoie holding that each person with a derivative claim is entitled to access each per person limit up to the total of the per accident coverage was limited expressly to derivative claims stemming from wrongful death actions.

UNDERINSURED MOTORIST COVERAGE

Simone v. Western Reserve Mutual Casualty Company, (Cuy. Co. App. No. 69236) April 18, 1996. For Plaintiff: Ronald A. Margolis. For Defendant: Robert J. Foulds. Opinion by Diane Karpinski. James D. Sweeney and David T. Matia concur.

Plaintiff's Father was killed in a motor vehicle accident caused by the negligence of tortfeasor. The tortfeasor was uninsured. Plaintiff did not live with her father at the time of the accident. Plaintiff brought suit against her own automobile insurance carrier to collect uninsured motorist coverage for the death of her father. Defendant filed a Motion for Summary Judgment alleging that, under the policy, plaintiff was not entitled to recover uninsured motorist benefits for the wrongful death of a parent who does not reside in the same household with the insured. The trial court granted Defendant's Motion for Summary Judgment. The Court of Appeals reversed and reaffirmed that it would no longer follow the decision in

Hedrick v. Motorists Mutual Insurance Company (1986), 22 Ohio St.3d 42 because Hedrick was overruled by Martin v. Midwestern Group Insurance (1994), 70 Ohio St.3d 478. Moreover, because the Court of Appeals found Hedrick to no longer be good law, the Eighth District Court of Appeals cases of Visocky v. Farmers Insurance of Columbus (1994), 98 Θ App. 3d 118 and Tavzel v. Aetna Life and Casualty Company (June 16, 1988), Cuy. App. Case No. 53931, unreported, are also no longer the law in this District. Instead, the Court of Appeals followed its recent decision in Hydel v. Cincinnati Insurance Company, (January 11, 1996), Case No. 68552, unreported, and the earlier case of Dudash v. State Farm Mutual Automobile Insurance Company (1994), 96 Θ App.3d 348, which in turn had relied upon the Ohio Supreme Court case of Sexton v. State Farm Mutual Insurance Company (1982), 69 Ohio St.2d 431. Moreover, the Court of Appeals further held that the amendments to Senate Bill 20, now R.C. 3937.18(A) are not to be applied retroactively. This latter holding of the Court of Appeals was based on its earlier rulings in Hydel, Wilson v. Allstate Insurance Company (Jan. 18, 1996), Cuy. App. No. 68982, unreported, and Finneran v. Bestor, (Cuy. App. No. 68774), November 11, 1995, unreported.[2]

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[2]This leaves the Court of Appeals' decision in Kocel v. Farmers Insurance of Columbus, Inc., Cuy. App. No. 275360 (March 7, 1996), unreported, the lone ranger in this appellate district in standing for the proposition that the amendments to R.C. 3937.18(A)(1) may be applied retroactively.. Counsel are still awaiting word as to whether the Ohio Supreme Court will accept jurisdiction of Kocel.

UNINSURED MOTORIST COVERAGE-RETROACTIVITY OF SENATE BILL 20

Thorn v. GRE Insurance Group, (Cuy. Co. App. No. 69390), May 16, 1996. For Plaintiff-Appellee: Nicholas D. Satullo. For Defendant-Appellant: John G. Farnon and Daniel A. Richards. Opinion by Ann Dyke. Sara Harper and John Patton concur.

In this decision the Court of Appeals applied the third paragraph of the Savoie syllabus in holding that the insurance policy set-off is from the total amount of plaintiff's damages rather than from the uninsured motorist limit contained in defendant's policy. Moreover, the Court of Appeals held that the amendments to Senate Bill 20, now embodied in R.C. 3937.18(A)(2) are not entitled to retroactive application. In so holding, the Court of Appeals followed its earlier line of decisions stemming from Finneran v. Bestor, supra.

***JURY* DELIBERATIONS – MISTRIAL**

Anselmo v. Davis, (Cuy. Co. App. No. 69794), May 16, 1996. For Plaintiff-Appellant: Robert J. Vecchio and J. Peter Parrish. For Defendant-Appellees: Timothy T. Reid and Cynthia L. C. Green. Per curiam.

The Court of Appeals upheld the trial court's grant of a mistrial under circumstances where the jury had reached a verdict and signed a general verdict form and interrogatories in favor of the plaintiff. After the Judge had received the verdict forms he called counsel into chambers and instructed the jury to return to the jury deliberation room. Apparently, the jury misunderstood the Judge's instruction and returned to the Justice Center, obtained their fees and left for their respective homes. Meanwhile, defense counsel had asked for a jury poll. The trial court was unable to reconvene the jury. The next morning the Court attempted to reach all of the eight jurors by telephone but was successful in reaching only six. The trial court then granted the mistrial. The Court of Appeals found no merit in plaintiff's argument that the trial judge had failed to comply with Civil Rules 49 and 58 in not

proceeding to the courtroom to read the jury's verdict in open court upon receipt of the verdict.

EMPLOYER INTENTIONAL TORTS - INSURANCE COVERAGE

Presswright Corporation v. Commercial Union Insurance Company, (Cuy. Cty. App. No. 68704), May 16, 1996. For Plaintiff-Appellant: Keith A. Vanderburg and Christopher A. Holecek. For Defendants-Appellees: Christopher M. Bechold, Jack F. Fuchs, Donald P. Screen and Walter A. Rogers. Opinion by Diane Karpinski. James J. Porter and Terrence O'Donnell concur.

This case gave the Court of Appeals the opportunity to revisit the issue as to whether Ohio Public Policy prohibits insurance coverage for "substantial certainty" torts in the employment context. The defendant in the case at bar argued that it did not owe indemnification to the plaintiff because Haraysn v. Normandy Metals (1990), 49 Ohio St.3d 173, is no longer good law due to a repeal of Ohio Revised Code Section 4121.80, the statute which was enacted to create a state fund for intentional torts. The defendant insurance company cited to the case of Royal Paper Stock Company v. Meridian Insurance Company (1994), 94 Ohio App.3d 327. Defendant's argument relied upon the Royal Paper Stock Court's interpretation that Haraysn was premised upon the fact that the State of Ohio had created a fund for intentional torts, thereby creating the implication that insurance coverage for employer intentional torts was not against public policy. The Court of Appeals disagreed with Royal Paper Stock Company and held that Haraysn continued to remain the law of Ohio. Specifically, the Court of Appeals found that Haraysn was based upon policy considerations other than the existence of the legislation which created the state fund. In so holding, the Court of Appeals recognized that its decision was contrary to a decision by another panel of the Eighth District Court of Appeals (New Hampshire Insurance Group v. Jack Frost June 29, 1995, Case No. 67823, unreported).

GENERAL RELEASE - ASSUMPTION OF THE RISK

Harsh, Administratrix, vs. Lorain County Speedway, Inc., (Cuy. Cty. App. No. 67265) May 9, 1996. For Plaintiff-Appellant: Dennis R. Lansdowne and James A. Marx. For Defendant-Appellee: Donald L. Anspaugh and David E. Ballard. Opinion by Terrence O'Donnell. Sara Harper and Donald Nugent concur.

Plaintiff was injured while at the Lorain County Speedway when a race car driver lost control of his vehicle which resulted in the vehicle leaving the racing surface at the southeast turn of the speedway and travelling an additional 140 feet across a grassy field and pit roadway, crashing through a guardrail, and then becoming airborne and landing on a 4 to 5 foot high manmade dirt embankment where plaintiff was viewing the race. When entering the track, plaintiff paid a fee and was handed a document which plaintiff was required to sign. The document purported to be a release, waiver of liability, covenant not to sue, indemnity agreement, hold harmless agreement, and an assumption of the risk. Defendant did not provide any explanation or copy of the document to the plaintiff. Moreover, plaintiff testified that he did not understand the document, did not have time to read the document and that he did not know that by signing it he gave up his right to sue the speedway. Plaintiff filed suit against the defendant alleging gross negligence, partially in reliance upon the fact that defendant's insurer had notified it that in order to meet minimum underwriting qualifications, defendant must install a 3/8 inch cable in the spectator and pit wheel fence areas prior to the opening of the racing season. The trial court granted Defendant's Motion for Summary Judgment based upon plaintiff's signing of the general release. The Court of Appeals reversed finding that a question of fact existed as to whether plaintiff knowingly released the defendant of all liability so that a meeting of the minds had occurred. The Court of Appeals also held that even if a finder of fact concluded that the release was executed knowingly by the plaintiff, a genuine issue of material fact existed as to whether defendant's conduct amounted to gross negligence. The Court of Appeals cited to Bowen v. Kil-Kare, Inc. (1992), 63 Ohio St.3d 84, for the proposition

that "a participant in a stock-car race and the proprietor of such activity are free to contract in such a manner so as to relieve the proprietor of responsibility to the participant for the proprietor's negligence, but not for the proprietor's willful or wanton misconduct."

COMPELLING ATTENDANCE OF BRAIN DAMAGED CHILL AT VOIR DIRE

Luke v. The Cleveland Clinic Foundation, (Cuy. Co. App. No. 69049) March 28, 1996. For Plaintiff-Appellant: Christian R. Patno and For Defendants-Appellees: Clifford C. Masch and Gary H. Goldwasser. Opinion by Terrence O'Donnell. James J. Sweeney and Diane Karpinski concur.

In this case the Court of Appeals held that the trial court's compelling the attendance of a brain damaged minor child at voir dire was not an abuse of discretion because "the physical courtroom presence of a severely brain damaged child innately arouses feelings of compassion and sympathy which carry a high potential to influence the verdict of jurors. For this reason, the trial court, in the exercise of its discretion, has wide latitude in controlling courtroom procedures not only to permit litigants to adequately present their respective cases, but also to ensure that jurors decide the case based on the evidence and the law not on emotion." The court noted that the plaintiffs intended to transport the child to court in order to demonstrate his physical and mental condition to the jury during the case-in-chief. Thus, in the opinion of the court, giving both parties an opportunity to examine potential jurors about their ability to be fair in the presence of the brain damaged child was neither unreasonable nor unconscionable on the part of the court.

TOLLING OF STATUTE OF LIMITATIONS - UNSOUND MIND

Casey v. Casey, (Cuy. Cty. App. No. 69027), March 7, 1996. For Plaintiff-Appellant: Jeffrey S. Watson, William M. Crosby and Nancy A. Kelley. For Defendant-Appellees: John W. Ours and Cecil Marlowe. Opinion by Timothy A. McMonagle. Leo M. Spellacy and Terrence O'Donnell concur.

Plaintiff sustained alleged sexual abuse at the hands of her father during the 1960's while she was a young child. Plaintiff repressed the memories of this sexual abuse until counseling sessions in October of 1988. Plaintiff filed her complaint against her father on April 16, 1993. Apparently, plaintiff recognized that the one year statute of limitations applicable to torts premised upon sexual abuse began to run in October of 1988 when she discovered the sexual abuse that her memory had repressed. However, plaintiff alleged that the statute of limitations should be tolled until November of 1992 when she recovered from the disability of "unsound mind" which disability is sufficient pursuant to Ohio Revised Code Section 2305.16 to toll the one year statute of limitations. However, the Court of Appeals ruled that where the only evidence of unsound mind was alcoholism, drug abuse, depression and the conclusory opinion of a treating psychologist that plaintiff was "of unsound mind and under a mental disability which prevented her from being able to look into her affairs, properly consult with counsel, prepare and present her case, and assert and protect her rights in a court, the evidence was not sufficient, as a matter of law, to demonstrate "unsound mind" for purposes of tolling the statute of limitations. With regard to the conclusory opinion of the psychologist, the Court of Appeals commented that Civil Rule 56(A) requires an opposing affidavit to be made on the personal knowledge of the affiant and set forth facts that would be admissible in evidence. The Court found that the psychologist's affidavit failed to satisfy either of these requirements. The court was of the opinion that the psychologist lacked personal knowledge of plaintiff's state of mind at the time the cause of action accrued and that the psychologist did not rely on any other admissible evidence to reach her conclusion. Finally, the court also found that the psychologist's affidavit did not disclose any underlying facts which provided a basis for her opinion regarding the soundness of plaintiff's mind during the relevant time frame.

VERDICTS AND SETTLEMENTS

John Doe v. Medical Center
Court and Judge: Cuyahoga County
Settlement: February, 1995
Plaintiff's Counsel: Jeffrey H. Spiegler
Defendant's Counsel: Confidential
Insurance Company: Confidential
Type of Action: Medical Malpractice

44 year old male disabled by severe retinal, peripheral and cardiovascular disease secondary to diabetes, suffered M.I. and underwent emergency CABG surgery. Post op. patient remained intubated, on respirator, for three days. Physicians had endotracheal tube positioned at 25 cm depth. Without consulting with any physician, on post-op day 3, resp. tech. raised tube to 20 cm, positioning balloon cuff on tube between or against vocal cords, where it remained for 14-16 hours, resulting in dislocation and tearing of cartilage attaching vocal cords to larynx.

Damages: Immobilization of vocal cords resulting in raspy voice. Some stenosis of trachea. Two laser surgeries to remove granuloma from vocal cords.
Plaintiffs Experts: Ake Grenvik, M.D., Univ. of Pittsburgh (intensivist); Dean Hess, R.R.T., Harvard Med. School. Boston, MA; James Medling, Ph.D., Cleveland, OH (psychologist)
Defendant's Experts: None
Settlement: $400,000.00

Layman v. Woo
Court: Ashtabula County Common Pleas (Case No. 93 CV 00672)
Settlement: March, 1995
Plaintiffs Counsel: Michael F. Becker and Craig Bashein
Defendant's Counsel: Jerome Kalur
Insurance Company: P.I.E.
Type of Action: Medical Malpractice

Birth asphyxia.

Damages: Infant with brain injury due to birth asphyxia.
Plaintiffs Experts: Denise White, R.N. (obstetrical nurse); Dr. Sharon Byrd (pediatric neuroradiologist)
Defendant's Experts: Dr. Robert Zimmerman (pediatric neuroradiologist)
Settlement: The claim against the hospital was settled prior to trial for $550,000.00; verdict $3,000,000.00 plus; settlement is confidential after verdict.

Estate of Merle Rodman v. Buckeye Steel
Court and Judge: Not Stated
Settlement: August, 1995
Plaintiffs Counsel: David A. Kulwicki and Joseph Fraley
Defendant's Counsel: Scott Jamieson.
Insurance Company: Not Applicable
Type of Action: Intentional Tort.

Blunt trauma to head.

Damages: Blunt trauma to head.
Plaintiffs Experts: Gerald Rennell, Industrial Safety Expert.
Defendant's Experts: Not listed
Settlement: Confidential

Mildred Thompson. Etr'x v. Kenneth Eugene. M.D.
Court and Judge: Summit County
Settlement: September, 1995
Plaintiffs Counsel: Jeffrey H. Spiegler
Defendant's Counsel: Matthew Moriarity
Insurance Company: P.I.E. Mutual Ins. Co.
Type of Action: Medical Malpractice

Decedent presented to defendant family practitioner with severe iron deficiency anemia and abdominal pain. Because of prior history of peptic ulcer disease, defendant assumed that to be diagnosis and did nothing to rule out lower G.I. bleeding. 21 months later, patient succumbs to cecal cancer. Defense claimed decedent first presented with incurable stage D cancer, plaintiff claimed cancer was curable, stage B or early C.

Damages: Decedent earned $6,700.00 per year in the 4 years preceding his death. Wrongful death. Client presented to attorney after Statute of limitations had expired on claim for conscious pain and suffering. Decedent survived by wife and 2 adult children.
Plaintiffs Experts: Barry Singer, M.D. (oncologist, Norristown, PA); Nathan Levitan, M.D. (oncologist, Univ. Hospitals, Cleveland, OH).
Defendant's Experts: John G. Buls, M.D. (colo-rectal surgeon, St. Paul, MN).

Settlement: $850,000.00

Estate of Kathryne Melis v. Dr. Dy, et al
Court and Judge: Cuyahoga County
Settlement: September, 1995
Plaintiffs Counsel: David **A.** Kulwicki
Defendant's Counsel: Stephen Walters and Steven Hupp
Insurance Company: Not Applicable
Type of Action: Medical Negligence.

Failure to diagnose colorectal cancer.

Damages: Failure to diagnose colorectal cancer.
Plaintiffs Experts: Raymond Weiss, M.D.; Harry Boltin, M.D.
Defendant's Experts: Carl Groppe, M.D.
Settlement: Judgment: $650,000.00; offer: $350,000.00; demand: $500,000.00

Confidential
Court: Cuyahoga County Common Pleas; Judge Patricia Gaughan
Settlement: September, 1995
Plaintiffs Counsel: Stephen Charms and Peter Marmaros
Defendant's Counsel: Withheld at their request
Insurance Company: Self-Insured Defendants
Type of Action: Medical Malpractice

This 45 year old diabetic was admitted to John Doe Hospital for the evaluation of hepatitis. During hospitalization, he developed some drainage from a blister in his foot. This drainage was not cultured. Approximately one week later, he underwent the first of 2 amputations followed by the second amputation approximately 3 weeks later due to out-of-control infections.

Damages: Bilateral below the knee amputations.
Plaintiffs Experts: Linda Graham, M.D. (treating physician at Cleveland **V.A.)**
Defendant's Experts: Withheld at request of defendants.
Settlement: $2,050,000.00

Confidential
Court: Lake County Common Pleas; Judge Mitrovich
Settlement: September, 1995
Plaintiffs Counsel: Peter Marmaros and Stephen Charms
Defendant's Counsel: Stephen Walters; Gary Banas; Steven Janik
Insurance Company: Frontier Ins. Co.; Doctors Ins. Co. of California; Lexington Ins. Co.
Type of Action: Medical Malpractice; Wrongful Death

Failure to timely diagnose cervical cancer which lead to multiple admissions for treatment of cervical cancer including chemo and radiation which burned a hole in the bowel requiring several surgeries and the premature wrongful death of a 37 year old woman.

Damages: Death.
Plaintiffs Experts: Withheld at physician's request.
Defendant's Experts: October 9, 1996avid Burkons, M.D.; Kenneth McCarty, M.D.
Settlement: $2,425,000.00

Confidential
Court: Cuyahoga County Common Pleas; Judge Brian Corrigan
Settlement: October, 1995
Plaintiffs Counsel: Daniel J. Klonowski
Defendant's Counsel: Confidential
Insurance Company: Confidential
Type of Action: Negligent Hiring

Plaintiff sexually assaulted by security guard with pre-employment criminal record.

Damages: Psychological trauma.
Plaintiffs Experts: William House, Ph.D.; Walter Knake, Ph.D.; Joseph Spoinster (vocational); John Burke, Ph.D. (economist); Eric Konicki (psychiatrist)
Defendant's Experts: None listed
Settlement: $480,000.00

James Meadows v. Robert Seymour. M.D.
Court and Judge: Cuyahoga County
Settlement: November, 1995
Plaintiffs Counsel: Jeffrey H. Spiegler
Defendant's Counsel: John Scott
Insurance Company: P.I.C.O.
Type of Action: Medical Malpractice

Plaintiff presents to defendant urologist with clinical stage B2/surgical stage C prostate CA. Urologist does not remove all the cancer and does not offer plaintiff adjuvant radiation or hormonal therapy. Within 1 year there is extensive local growth and metastases to lungs. Radiation and hormonal therapy put cancer into remission for 2-1/2 years. Plaintiff was living and working at time of settlement, 1 day before trial. Plaintiff's expert claimed immediate adjuvant therapy would increase survival by 4 to 5 years. Defense experts claim immediate adjuvant therapy offers no survival advantage over delayed therapy.

Damages: Life expectancy diminished 4 to 5 years. Pain and suffering.
Plaintiffs Experts: Gerald Hanks, M.D., (Fox Chase Cancer Ctr., Philadelphia, PA. - radiation oncology).
Defendant's Experts: Martin Resnick, M.D. (Univ. Hosp., Cleveland, Ohio - urologist); Joel Greenberger, M.D. (Univ. of Pittsburgh - radiation oncologist).
Settlement: $250,000.00

John Doe v. ABC Hospital, et al
Court and Judge: Summit County Common Pleas, Judge Callahan
Settlement: November, 1995
Plaintiffs Counsel: Paul M. Kaufman, Esq.
Defendant's Counsel: Matthew Moriarty, Esq. and Dale Kwarciany, Esq.
Insurance Company: PIE
Type of Action: Medical Malpractice.

Failure to properly diagnosis and treat ankle and foot infection resulting in several operations and permanent disfigurement.

Damages: Permanent, disfiguring injury to lower leg, ankle and foot.
Plaintiffs Experts: Martin Raff, M.D. (infectious disease)
Defendant's Experts: David Baroff, M.D. (orthopedic); Steven Bass, M.D. (infectious disease).
Settlement: $500,000.00 ($300,000.00 cash plus assumption of $200,000.00 medical expense claim)

Dereck Anderson. a Minor. et al v. Dunlap Memorial Hospital
Court and Judge: Wayne County Common Pleas; Judge Robert J. Brown
Settlement: December, 1995 **and** April, 1996
Plaintiffs Counsel: Michael F. Becker
Defendant's Counsel: Robert D. Warner, Esq. and Mark D. Frasure, Esq.
Insurance Company: PICO and Ohio Hospital Insurance Co.
Type of Action: Medical Malpractice.

Policy limits settlement was obtained from the hospital prior to the child's sudden death.

Damages: Birth asphyxia involving severe neurological compromise of a newborn baby that suddenly died at age 2-1/2 yrs. (during the course of litigation).

Plaintiffs Experts: Stuart Edelberg (ob/gyn); Robert Lerer (pediatrician)
Defendant's Experts: Mark Scherer (ped/neurology); Mark Landon (ob/gyn)
Settlement: $1,040,000.00

Confidential
Court: Cuyahoga County Common Pleas Court; Judge Michael Gallagher
Settlement: December, 1995
Plaintiffs Counsel: Stephen Charms; Peter Marmaros; Leonard Davis
Defendant's Counsel: Anthony Dapore and withheld
Insurance Company: P.I.E. Mutual Insurance Co. and Withheld
Type of Action: Medical Malpractice.

This woman went into the hospital for a total abdominal hysterectomy. Anesthesia was delivered by a C.R.N.A. with the surgeon in the room and no anesthesiologist in attendance. The plaintiff sustained a stroke as a result of blood loss during the operation without the anesthesiologist being called to replace the fluid.

Damages: Cerebral stroke resulting in some right-sided weakness, vision limitation and short-term memory deficits.
Plaintiffs Experts: Russell Trusso, D.O. (anesthesiologist); Martin Dauber, M.D. (anesthesiologist); Jack Conomy, M.D. (neurologist); John Burke, Ph.D. (economist).
Defendant's Experts: None listed
Settlement: $1,500,000.00 - Case settled before trial.

Deberea Stokes. et al v. University Hospitals. et al
Court: Cuyahoga County Common Pleas Court; Judge Shirley Strickland Saffold
Settlement: December, 1995
Plaintiffs Counsel: Peter Marmaros and Bruce Bialer
Defendant's Counsel: Joseph Farchione; Bruce Goldstein; Gary Goldwasser
Insurance Company: P.I.E. Mutual Ins. Co.; Healthdyne self-insured for first $1,000,000; Zurich American Ins. Co.; National Union Fire Ins. Co. of Pittsburgh
Type of Action: Medical Malpractice; Brain Damaged Baby.

Mrs. Stokes was left paralyzed by a gunshot during her pregnancy with this child. She was placed on electronic monitoring at home prior to delivery. The home monitoring was removed against the orders of Dr. Muise, the treating obstetrician. Dr. Muise also failed to admit Mrs. Stokes to the hospital when her condition warranted it just days before delivery. Mrs. Stokes was unable to feel contractions as she was left numb below the waist. She delivered a severely brain damaged child.

Damages: Cerebral palsy spastic quadriplegia.
Plaintiffs Experts: Tom Barden, M.D. (plaintiffs treating physician); John Burke, Ph.D. and George Cyphers
Defendant's Experts: Gary Essig, M.D.; Robert Zimmerman, M.D.; David Genest, M.D.
Settlement: $2,700,000.00

Elizabeth Mancini. et al v. Warren General Hospital, et al
Court: Trumbull County Common Pleas Court; Judge McKay
Settlement: December, 1995
Plaintiffs Counsel: Stephen Charms; Peter Marmaros; Leonard Davis
Defendant's Counsel: John Scott; Anthony Dapore; John Kuzman
Insurance Company: Medical Protective
Type of Action: Medical Malpractice/Wrongful Death.

Plaintiffs decedent sustained a heart attack and was admitted to Warren General Hospital. He was prematurely put on a treadmill for an exercise stress test and died of a massive heart attack while on the treadmill.

Damages: Death.
Plaintiffs Experts: Richard Watts, M.D.
Defendant's Experts: Frank Pamelia, M.D.; Barry Effron, M.D.
Settlement: $475,000.00

Confidential
Court and Judge: Confidential
Settlement: January, 1996
Plaintiffs Counsel: William **S.** Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: John Scott
Insurance Company: Confidential
Type of Action: Medical Malpractice

Case was initially settled for $825,000.00 based upon $1,000,000.00 coverage and disputed liability. Plaintiffs counsel had been informed of coverage limits via interrogatory answers and had also seen the actual policy. Settlement was contingent upon plaintiffs counsel being able to look at the underwriting file of defendant. This revealed another policy which was arguably applicable. Thereafter, settlement was re-negotiated to $1,360,000.00.

Damages: Brain damage.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $1,360,000.00

Dr. Peter G. Kontos v. Betty Frenchak
Court and Judge: Geauga County Common Pleas Court; Judge Inderlied
Settlement: January, 1996
Plaintiffs Counsel: Thomas J. Silk, SMITH, CONDENI AND ABEL CO., L.P.A.
Defendant's Counsel: Laurence F. Buzzelli
Insurance Company: Continental Insurance (The Buckeye Union Ins. Co.)
Type of Action: Automobile Negligence

Plaintiff was travelling eastbound on a rural two-lane, undivided highway. Defendant was approaching in a westbound direction, and after having just cleared a hill, attempted to pass a truck travelling in front of her. Her panel van crashed into the front of plaintiffs vehicle virtually head-on, pinning the plaintiff in his vehicle for approximately 30-45 minutes until emergency rescue personnel could cut the top off of his vehicle and remove the plaintiff. Plaintiff contended that the defendant was negligent in the operation of her vehicle in travelling too fast, in making an improper passing maneuver and in causing the head-on collision.

Damages: Closed head injury, severely fractured left humerus requiring intermedulary rodding with subsequent removal, severe cuts, lacerations, bruising and scarring, partial left ear severing, vertigo tinnitus and neurological compromise.
Plaintiffs Experts: Dr. Norman Leftkovitz (neurologist); Dr. George Kellis (orthopedics); Dr. Delphia M. Toth (neuropsychologist): and Dr. Jose Pozuelo (psychiatry and psychochemistry).
Defendant's Experts: None.
Settlement: $496,200.00 NOTE: Plaintiffs underinsured claim and his childrens' claim for loss of services, both pursuant to the authority of Savoie v. Grange Mutual Insurance Co., 67 Ohio St.3d 500, 620 N.E.2d 809, are pending.

Ralph Sanders v. EMH Regional Medical Center
Court and Judge: Lorain County Common Pleas Court; Judge Edward Zaleski
Settlement: February, 1996. Pre-judgment interest gained in May of 1996.
Plaintiffs Counsel: Michael F. Becker
Defendant's Counsel: Richard Reichel
Insurance Company: EMH - self-insured
Type of Action: Medical Malpractice.

Medical malpractice - nursing negligence of improper administration of blood products given the unstable state of the patient resulting in IV infiltration, etc.

Damages: IV infiltration injury to hand resulting in the eventual amputation of two and a half fingers in this 84 year old man.
Plaintiffs Experts: Crystal C. Miller, RN.
Defendant's Experts: Linda DeWitt, RN.
Settlement: $200,000.00 and approximately $75,000.00 in pre-judgment interest; offer - $50,000.00; demand - $125,000.00

Cheryl Tompot v. Kalliniki Verikis. M.D.
Court: Cuyahoga County Common Pleas Court; Judge Lillian Greene
Settlement: March. 1996
Plaintiffs Counsel: Peter Marmaros; Stephen Charms; Steven Rabold
Defendant's Counsel: Lee Spisak
Insurance Company: Not Listed
Type of Action: Medical Malpractice.

Early in her pregnancy, plaintiff palpated a mass in her breast. This was pointed out to her obstetrician who failed to work-up the mass resulting in a 6 month delay in the diagnosis of an aggressive breast cancer.

Damages: Plaintiff went from Stage 2A to 3B due to 6 month delay in diagnosis of breast cancer.
Plaintiffs Experts: Paul Gatewood, M.D. (ob/gyn - standard of care); plaintiffs treating breast oncologist on proximate cause and damages.
Defendant's Experts: Kenneth McCarty, M.D.
Settlement: $1,550,000.00

John Doe v. ABC Hospital
Court and Judge: Cuyahoga County Common Pleas Court; Judge Aurelius
Settlement: March, 1996
Plaintiffs Counsel: Paul M. Kaufman
Defendant's Counsel: Martin Franey
Insurance Company: §elf-Insured
Type of Action: Medical Malpractice.

Plaintiff had been in a serious motorcycle accident; after several days, he was transferred to a regular room. Within one half hour after transfer, he was found on the floor of his room. Evidence revealed he had not been appropriately restrained.

Damages: Neurological injury after fall from hospital bed.
Plaintiffs Experts: Susan Chester, M.D. (Metrohealth Medical Center); Georgia Awig, R.N.
Defendant's Experts: Janice Hickman, R.N.
Settlement: $287,500.00

Raymond Braat, et al v. Lightning Rod Mutual Ins. Co.. et al
Court: Ashtabula County Common Pleas Court; Judge Yost
Settlement: March, 1996
Plaintiffs Counsel: Patrick T. Murphy
Defendant's Counsel: Duane Dubsky
Insurance Company: Lightning Rod MIC
Type of Action: Direct Action Against UM Carrier And Tortfeasor.

Uninsured unattended vehicle rolled 28 feet in parking lot pinning plaintiff between the vehicles.

Damages: Internal derangement of left knee with arthroscopic repair, lower back strain with exacerbation and treatment one year later.
Plaintiffs Experts: Jeffrey Brodsky, D.O.
Defendant's Experts: Donavin Bauingartner, M.D.
Settlement: Judgment - $125,000.00; Offer - $40,000.00; Demand - $75,000.00

Gregory Shovary v. Scott May
Court and Judge: Cuyahoga County Common Pleas; Judge T. McCormick
Settlement: April 2, 1996
Plaintiffs Counsel: Charles Kampinski and Christopher Mellino
Defendant's Counsel: Michael Yarborough
Insurance Company: Travelers Insurance
Type of Action: Automobile

Defendant went left of center at night and crossed a double yellow line, passing seven cars and striking plaintiffs car head on.

Damages: Fractured femur.
Plaintiffs Experts: Robert Zaas, M.D.
Defendant's Experts: None
Settlement: $400,000.00

Carl Gaves and Hazel Gaves v. Ahmet T. Cabi, Precha Wongtrakool, St. Joseph Riverside Hospital
Court and Judge: Tumbull County
Settlement: April, 1996
Plaintiffs Counsel: Ellen S. Simon and Pamela Pantages
Defendant's Counsel: James L. Blomstrom and Michael J. Hudak
Insurance Company: PICO/PIE
Type of Action: Medical Malpractice.

Carl Gaves had peripheral arterial-vascular disease which required a femoral bypass graft. The first surgery, performed by Dr. Cabi in March of 1991, failed necessitating a repair surgery. The second surgery, performed by Dr. Cabi in August of 1992 with the assistance of Dr. Wongtrakool failed immediately, and neither Dr. Cabi nor Dr. Wongtrakool intervened in the face of obvious symptoms consistent with a lack of circulation in Mr. Gaves' leg and foot post operatively; in the following days, Mr. Gaves leg became necrotic; he suffered multi-system organ failure, and was life flighted to the Cleveland Clinic eight days post operatively where he underwent multiple surgeries.

Damages: See Above
Plaintiffs Experts: Alfred J. Martin, Jr., M.D. (vascular surgery)
Defendant's Experts: Louis Flancbaum, M.D. (general surgery); John J. Bergan, M.D. (vascular surgery).
Settlement: $805,000.00 plus prejudgment interest awarded.

Estate of Jane Doe v. ABC Professional Group
Court and Judge: Cuyahoga
Settlement: May, 1996
Plaintiffs Counsel: Jeanne M. Tosti
Defendant's Counsel: Alan Parker
Insurance Company: Self-Insured
Type of Action: Medical Malpractice/Wrongful Death.

Plaintiff was admitted to the hospital with a recent history and symptoms consistent with acute leukemia. Blood smear studies were highly suspicious, if not diagnostic, for acute promyelocytic leukemia. Defendant failed to immediately undertake bone marrow studies to confirm the diagnosis and failed to initiate treatment to reduce the risk for bleeding complications associated with this type of acute leukemia. Plaintiff suffered a catastrophic brain hemorrhage less than 24 hours after admission and died a few hours later.

Damages: Death due to brain hemorrhage.
Plaintiffs Experts: Peter Wiernik, M.D.
Defendant's Experts: Alan Lubin, M.D.
Settlement: $270,000.00

Sherry Rice v. Liberty Mutual Ins. Co., et al
Court: Underinsured claim settled before suit.
Settlement: May, 1996
Plaintiffs Counsel: John A. Lancione, BECKER & MISHKIND CO., L.P.A.
Defendant's Counsel: John Rasmussen
Insurance Company: Liberty Mutual Insurance Co. and State Farm Insurance Co.
Type of Action: Underinsured insurance claim.

Plaintiff was a passenger in underinsured's Dodge Stealth. The vehicle left the road at 80 mph, struck a tree and a guardrail, which perforated the passenger door striking plaintiff. UIM policy limit was $350,000.00.

Damages: Shear fracture of pelvis, de-gloving of left calf, ruptured bladder, groin laceration.
Plaintiffs Experts: John Sontich, M.D. (trauma surgery)
Defendant's Experts: None
Settlement: $345,000.00

Diane Nielsen v. Lawrence White. M.D.
Court: Cuyahoga County Common Pleas Court' Judge Friedland
Settlement: May, 1996
Plaintiff's Counsel: John A. Lancione, BECKER & MISHKIND CO., L.P.A.
Defendant's Counsel: Stephen Hupp
Insurance Company: P.I.E.
Type of Action: Wrongful Death; Medical Malpractice.

Defendant failed to perform coronary angiography and failed to institute adequate medical therapy for decedent's known coronary artery disease. Cause of death was arrhythmia secondary to acute ischemic event.

Damages: Wrongful death of 59 year old. Survived by two children ages 9 and 5.
Plaintiff's Experts: Claude Brachfeld, M.D. (cardiology; Denver, CO.).
Defendant's Experts: Charles Blatt, M.D. (cardiology; Boston, Mass.)
Settlement: $800,000.00.

Jane Doe v. John Roe. M.D.
Court and Judgs: Cuyahoga County Common Pleas; Judge Gail Rose Kane
Settlement: May, 1996
Plaintiffs Counsel: Paul M. Kaufman and Kevin McDermott
Defendant's Counsel: John Jackson
Insurance Company: PIE
Type of Action: Medical Malpractice.

Plaintiffs urethra was injured during bladder surgery.

Damages: Partial incontinence.
Plaintiffs Experts: Elwin Fraley, M.D., Minneapolis (Urological surgeon)
Defendant's Experts: Jerry Blaivas, M.D., New York City (urological surgeon)
Settlement: $250,000.00

Confidential
Court and Judge: Cuyahoga County; Judge Boyko
Settlement: June, 1996
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Diedre Henry and Les Spisak
Insurance Company: St. Paul and PICO
Type of Action: Medical Malpractice.

Defendants treated plaintiff, a severe diabetic, for an ulceration of the toe. Defendants failed to prescribe appropriate antibiotics and failed to drain infection, resulting in amputation.

Damages: Below the knee amputation.
Plaintiffs Experts: Charles Peck, M.D., Neil Crane, M.D.
Defendant's Experts: Andrian Schnall, M.D.
Settlement: $900,000.00

Jane Doe v. ABC Hospital
Court and Judge: Cuyahoga
Settlement: June, 1996
Plaintiffs Counsel: Jeanne M. Tosti
Defendant's Counsel: Christine Reid
Insurance Company: Self-Insured
Type of Action: Medical Malpractice.

Plaintiff entered the hospital for scheduled cesarean section delivery. During delivery tubal ligation was performed without plaintiffs knowledge or consent. After delivery plaintiff was prescribed and received a long acting contraceptive injection. Two months later at a follovr-up visit plaintiff discovered she had undergone unwanted tubal ligation at the time of her cesarean section.

Damages: Sterilization, unwanted tubal ligation.
Plaintiffs Experts: Marshall Klavan, M.D.
Defendant's Experts: John Karlen, M.D.
Settlement: $100,000.00

Mozley v. Western Reserve Care Systems. et al
Court and Judge: Mahoning County, Judge Gerchak
Settlement: June, 1996
Plaintiffs Counsel: Peter H. Weinberger
Defendant's Counsel: David Comstock; William Bonezzi
Insurance Company: Self Insured/PIE Mutual
Type of Action: Medical Malpractice.

Failure to monitor respiratory status of post abdominal aneurysectomy patient resulting in cardiopulmonary arrest.

Damages: Paraplegia.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $950,000.00

Bruff v. Catterlin
Court and Judge: Trumbull County, Judge Wyatt McKay
Settlement: June, 1996
Plaintiffs Counsel: Peter H. Weinberger
Defendant's Counsel: Patrick Murphy
Insurance Company: PIE Mutual
Type of Action: Medical Malpractice.

Ten month delay in diagnosing colorectal cancer. Plaintiff required surgery and cancer went into remission for *3-li2* years and then recurred.

Damages: Failure to diagnose colorectal cancer.
Plaintiffs Experts: Robert Goldstein, M.D. (gastroenterology).
Defendant's Experts: Not Listed
Settlement: *$775,000.00*

Estate of Jakhari Johnson v. MetroHealth Medical Center. et al
Court and Judge: Cuyahoga County Common Pleas, Judge William Mahon
Settlement: June, 1996
Plaintiffs Counsel: Howard D. Mishkind
Defendant's Counsel: Christine Reid and Marc Groedel
Insurance Company: Self Insured
Type of Action: Medical Malpractice.

Failure to timely diagnose Group B Strep in an 18 year old single patient with multiple risk factors for development of infection during intrapartum period.

Damages: Death of 13 hour old baby and post partum infection in mom.
Plaintiffs Experts: Dr. Michael Cardwell, Toledo, Ohio
Defendant's Experts: Dr. Mark Landon, Columbus, Ohio
Settlement: Judgment: $475,000.00; Demand: $750,000.00

Jessica Jamison, etc. v. Bellefaire Jewish Childrens Bureau
Court and Judge: Cuyahoga County Common Pleas; Judge J. Villanueva
Settlement: June 10, 1996
Plaintiffs Counsel: Charles Kampinski and Christopher Mellino
Defendant's Counsel: Gary Goldwasser and William Meadows
Insurance Company: CNA
Type of Action: Negligence in contributing to cause and failing to prevent suicide.

Isabel Jamison was a patient at Bellefaire. She had previously been at Berea Childrens Home where she had been doing well for approximately one year. Upon initially being transferred to Bellefaire Childrens Home, she did well throughout the summer of 1993. However, began showing signs of depression in the fall of 1993. It was ultimately discovered that a male staff worker at Bellefaire was having inappropriate sexual contact with her. That worker was discharged and the county investigation determined that the sexual abuse was indicated.

Discovery revealed that other staff workers had in fact sexually abused other residents both before and after the instant situation. The county investigator responsible for investigating sex crimes testified that at any given time, he was investigating three to five allegations of sexual abuse by staff workers at Bellefaire with residents.

Isabel was transferred to a more restrictive cottage. She was being given Elavil, an anti-depressant. Three successive blood tests showed that she was not taking the medication as prescribed and that she was hoarding it. She gave a letter to the Bellefaire employees indicating that she was planning to commit suicide. She also put a note on her door indicating the same thing. No actions were taken to insure that she was taking her medication and indeed she overdosed on Elavil on February 28, 1994, and died on March 17, 1994.

Damages: Pain and suffering and death.
Plaintiffs Experts: Kris Sperry, M.D. (pathologist-toxicologist)
Defendant's Experts: Douglas Jacobs, Ph.D. (psychiatrist)
Settlement: Judgment: $500,000.00; $100,000.00 was returned on the survivorship claim and $400,000.00 on the wrongful death claim.

Stephens v. A-Able Rents Company
Court and Judge: Cuyahoga County Common Pleas; Judge Lawther from Judge Kilbane-Koch
Settlement: June 14,1996
Plaintiffs Counsel: David W. Goldense and Joseph Dubyak
Defendant's Counsel: Scott Smith
Insurance Company: Continental National Indemnity
Type of Action: Violation of USDOT regulations and industry hiring procedures.

Defendant's crack-addicted delivery driver beat and attempted to rape plaintiff in her home. Defendant negligently hired its driver in violation of applicable USDOT regulations and industry hiring procedures.

Damages: Post-traumatic stress disorder; positional vertigo resolved by surgery on inner ear.
Plaintiffs Experts: Hiring: Thomas Bader; Trucking Regulations: Robert Locy; ENT surgeon: Richard Gacek; and Psychologist: Margaret Lahner.
Defendant's Experts: None
Settlement: Judgment: $3,350,000.00; offer: $250,000.00; settlement: $3,800,000.00; demand: $2,500,000.00.

Confidential
Court and Judge: Lorain County Common Pleas Court; Judge McGough
Settlement: July, 1996
Plaintiffs Counsel: William S. Jacobson, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Don Switzer
Insurance Company: PIE
Type of Action: Medical Malpractice.

Defendant failed to diagnose hip fracture resulting in the necessity of total hip replacement.

Damages: Hip replacement.
Plaintiffs Experts: Rod Durgin, Ph.D.; Robert Colyer, M.D.
Defendant's Experts: Robert Corn, M.D.
Settlement: $585,000.00

Varcelli v. Nationwide
Court and Judge: UMI Claim
Settlement: July, 1996
Plaintiffs Counsel: Peter H. Weinberger
Defendant's Counsel: None
Insurance Company: Nationwide
Type of Action: Auto

Thoracic disc injury resulting in urinary incompetence.

Damages: See Above.
Plaintiffs Experts: Dr. John Davis (orthopedic surgery)
Defendant's Experts: Not Listed
Settlement: $300,000.00

Richard La busky v. State Farm
Court and Judge: Summit County Common Pleas, Judge Michael Callahan
Settlement: July, 1996
Plaintiffs Counsel: R. Mark Gottfried
Defendant's Counsel: David Hilkert
Insurance Company: State Farm Insurance Co.
Type of Action: Underinsured Motorist

Defendant-tortfeasor went left of center and struck plaintiff head-on. Tortfeasor paid $12,500.00 limits. State Farm argued that plaintiffs vision problems were unrelated.

Damages: Bilateral fourth nerve palsy; cervical radiculapathy; post-traumatic cervical strain.
Plaintiffs Experts: Ronald Price, M.D. (ophthalmologist); Romeo Craciun, M.D. (neurologist).
Defendant's Experts: Frank Weinstock, M.D. (ophthalmologist).
Settlement: $70,000.00

Evelyn Webb. Executrix v. John Pressler. M.D.. et al
Court and Judge: Butler County (Hamilton, Ohio)
Settlement: August, 1996
Plaintiffs Counsel: Jeffrey H. Spiegler
Defendant's Counsel: David Calderhead
Insurance Company: P.I.E. Mut. Ins. Co.
Type of Action: Medical Malpractice/Wrongful Death.

Decedent's colon perforated during colonoscopy exam. Defendant did a temporary colostomy. Two months later, defendant surgeon reconnected colon (reanastamosis). Surgeon failed to timely diagnose or treat leakage of anastamosis which started about three days after surgery. Decedent developed generalized peritonitis, underwent three more surgeries, and succumbed two months later.

Damages: Failure of anastamosis to reconnect left colon. Peritonitis leading to 3 additional surgeries and death.
Plaintiffs Experts: W. Stuart Battle, M.D. (Laurel, MD - surgeon); Howard Nearman, M.D. (University Hosp. Cleveland, OH - intensivist); Michael Weaver, M.D. (Mt. Sinai Med. Ctr., Cleveland, Oh - pathologist).
Defendant's Experts: Steven Wanamaker, M.D. (Columbus, OH - surgeon).
Settlement: Judgment: $2,806,000.00; Demand, $6,300,000.00

Roman v. White Swan
Court and Judge: Cuyahoga transferred to Knox County
Settlement: August, 1996
Plaintiffs Counsel: Peter H. Weinberger and Stuart E. Scott
Defendant's Counsel: Joseph Gerling
Insurance Company: AIG/Home Insurance
Type of Action: Auto/Truck Collision.

Plaintiff was a driving instructor and was a passenger in a vehicle driven by a 16 year old student whose vehicle was struck by the defendant's tractor trailer rig that went left of center. Admitted liability.

Damages: Fractured femur requiring pinning, post traumatic stress disorder.
Plaintiffs Experts: None Listed
Defendant's Experts: None Listed
Settlement: $675,000.00

Menges v. Aultman Hospital, et al
Court and Judge: Stark County, Judge John Haas
Settlement: August, 1996
Plaintiffs Counsel: Peter Weinberger/Justin Madden
Defendant's Counsel: Phillip Howes, Alicia Wyler
Insurance Company: Self Insured, Evanston Insurance
Type of Action: Medical Malpractice/Wrongful Death.

Defendant surgery failed to timely treat and diagnose bowel perforation.

Damages: Death.
Plaintiffs Experts Mark Shapiro, M.D. (trauma surgery)
Defendant's Experts: Kenneth Spano, M.D. (general surgery); Daniel Schelble, M.D. (ER medicine).
Settlement: $2,000,000.00

Estate of Jane Green v. U.S. Air, Inc., et al
Court and Judge: U.S. District Court, District of South Carolina
Settlement: September, 1996
Plaintiffs Counsel: Jamie R. Lebovitz
Defendant's Counsel: Dombroff & Gilmore
Insurance Company: Associated Aviation Underwriters
Type of Action: Aviation - crash of U.S. Air DC-9-30 aircraft

U.S. Air Flight 1016 crashed on July 2, 1994 while on final approach to Charlotte Int'l Airport. The flight crew failed to recognize windshear condition in a timely manner; failed to establish and maintain proper altitude and thrust getting necessary to escape windshear.

Damages: Massive trauma as result of impact forces from airplane crash.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $1,300,000.00

Estate of John Green v. U.S. Air. Inc.. et al
Court and Judge: U.S. District Court, District of South Carolina
Settlement: September, 1996
Plaintiffs Counsel: Jamie R. Lebowitz
Defendant's Counsel: Dombroff & Gilmore
Insurance Company: Associated Aviation Underwriters
Type of Action: Aviation - crash of U.S. Air DC-9-30 aircraft

U.S. Air Flight 1016 crashed on July 2, 1994 while on final approach to Charlotte Int'l Airport. The flight crew failed to recognize windshear condition in a timely manner; failed to establish and maintain proper altitude and thrust getting necessary to escape windshear.

Damages: Massigve trauma as result of impact forces from airplane crash.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $1,650,000.00

Estate of John Doe v. John Roe. M.D. (gastroenterologist)
Court and Judge: Cuyahoga County
Settlement: September, 1996
Plaintiffs Counsel: Jamie R. Lebovitz
Defendant's Counsel: Confidential
Insurance Company: PIE
Type of Action: Medical Malpractice/Wrongful Death.

Decedent underwent colonoscopy in April, 1991 due to history of rectal bleeding. Defendant physician identified or should have identified a suspicious lesion which he failed to excise and biopsy. Repeat colonoscopy in February, 1992 by same M.D. led to diagnose (albeit untimely). Retrospective review of chest films revealed metastatic tumors to lung in late 1991.

Damages: Death as a result of metastatic carcinoma of the colon.
Plaintiffs Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $500,000.00