Cleveland Academy of Trial Attorneys

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CLEVELAND ACADEMY OF TRIAL ATTORNEYS
JULY, 1997 NEWSLETTER

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PRESIDENT'S COLUMN

The annual Cleveland Academy of Trial Attorney's Installation Dinner was held on May 30, 1997 and was a great success. I think all of our members in attendance enjoyed themselves and were favorably impressed by our speaker, Jan Schlichtmann, the lawyer who was the subject of the novel *A Civil Action* by Jonathan Harr. Indeed his talk was inspirational as it reminded us about some of the ethical underpinnings of our practice including his personal views about truth and candor in litigation. As an aside, I invited all of our past presidents to this affair, many of whom personally responded expressing regrets or actually attended. We certainly can learn from those who have been in the trenches before us.

I expressed in my remarks at the installation dinner the goals identified for the 1997-98 term. We will endeavor to continue producing our quality newsletter on a bi-monthly basis. The current depositions/brief bank will be indexed in a computer database and moved to a private company for safekeeping and to respond to member requests for dissemination of materials. The luncheon seminar series will continue under Bob Linton's supervision. Jean McQuillan will be chairing the Bernard Friedman Seminar which will occur on March 6, 1998 and it will be co-sponsored this year by the Ohio Academy of Trial Lawyers.

ANNUAL GOLF OUTING

David Goldense advises me that the Cleveland Academy of Trial Attorneys' Annual Golf Outing will take place on August 28, 1997 at Spring Valley Country Club beginning at 12:00 p.m. Please mark this date on your calendars and further information will be forthcoming.

NETWORKING

It is more important than ever that we keep each other advised about trial court and Court of Appeals' rulings that construe the various sections of tort "reform." For instance, it has recently come to my attention that a political subdivision attempted to apply a new section of the Political Subdivision Immunity law by appealing the trial court's **denial** of a motion for summary judgment based on immunity. The new tort reform provision makes such a ruling a final order thereby subject to appeal. However, the Eighth District Court of Appeals on a motion to dismiss refused to apply this provision retroactively to a case which arose before January 27, 1997. See Shaker Auto Lease, Inc. v. City of Cleveland Heights, Case No. 72022 (Cuy. Cty., June 19, 1997). Please forward all rulings to my attention and I will see to it that they are incorporated into our deposition/brief bank and I will attempt to summarize them throughout the year in this column.

LUNCHEON SEMINAR SERIES

Bob Linton indicates that the luncheon seminars will resume in September, with the first scheduled for September 25, 1997 at the Cleveland Marriott Society Center. The topic is "Show and Tell: Latest Trends in Demonstrative Evidence for the Personal Injury Lawyer" and the speaker will be Daniel Copfer, President of Visual Evidence Co.

Sincerely,

Richard C. Alkire, President

RCA/jjt

UNDERINSURED MOTORIST - CONFLICT OF LAWS

Hooker v. Nationwide Mutual Insurance Company, Case No. 71472, Cuy. Cty. App., June 19, 1997. For Plaintiff-Appellant: Stephen E. Walters and For Defendant-Appellee: Timothy D. Johnson. Opinion by Kenneth A. Rocco. James D. Sweeney and Patricia Ann Blackmon concur.

Plaintiff held a policy of insurance with Nationwide that provided underinsured motorist coverage in the amount of One Hundred Thousand Dollars ($100,000.00). Plaintiff was a resident of North Carolina and her car was registered and principally garaged in North Carolina. Plaintiff and Nationwide entered into the contract for insurance in the State of North Carolina. Plaintiff was severely injured in an automobile accident in Ohio. The insurance company for the Ohio tortfeasor paid Two Hundred and Eight-Six Thousand Dollars ($286,000.00) to the plaintiff. Plaintiff then sought to recover under her underinsured motorist provision. Cross Motions for Summary Judgment were filed and the trial court granted Nationwide's Motion. After noting that the applicable law of North Carolina would permit Nationwide to set off the amount paid by the tortfeasor from its underinsured limit whereas Ohio law would require the set-off to be made from the plaintiff's total damages, the Court of Appeals affirmed on the basis that North Carolina law rather than Ohio law was applicable to the case. The Court of Appeals, citing Miller v. Progressive Casualty Insurance Company (1994), 69 Ohio St.3d 619, determined that the action between plaintiff and Nationwide was one sounding in contract. Because plaintiff's claim was a contract action, in determining the choice of law, Section 188 of I Restatement of the Law 2d, Conflict of Laws, applied. Section 188 of the Restatement states that in the absence of an effective choice of law by the parties, the contacts to be taken into account to determine the law applicable to an issue include the place of contracting, the place of negotiation of the contract, the place of performance, the location of the subject matter of the contract, and the domicile, residence, nationality, place of incorporation and place of business of the parties. Under these factors, the Court of Appeals held that the law of North Carolina was applicable. The Court attempted to distinguish the Supreme Court's decision in Kurent v. Farmers Insurance of Columbus (1991), 62 Ohio St.3d 242, wherein it was held that Michigan's no-fault law applied to bar an Ohio resident from seeking recovery under her uninsured motorist provision even though her motor vehicle was principally garaged in Ohio and the contract of insurance was entered into in the State of Ohio.

WORKERS COMPENSATION - SUBROGATION RIGHTS

Murphy v. Clarklift of Cleveland, Case No. **71103,** Cuy. Cty. App., May **22, 1997.** For Plaintiff-Appellee: Marc E. Barbour and For Defendant-Appellant: R. Patrick Baughman and Terrence J. Jones. Opinion by Terrence O'Donnell. Judges Nahra and Spellacy concur.

Plaintiff was injured at work as a result of an allegedly defective door on a Bobcat loader. Plaintiff filed for and received workers compensation benefits from his employer, LTV Steel. Plaintiff then filed an action against Clarklift of Cleveland. LTV Steel sought to intervene in order to assert their subrogation rights in the amount of the workers compensation benefits which it had paid to plaintiff. The injuries were sustained on January **28, 1994.** LTV urged the Court that amended R.C. **4123.93** became effective on October **20, 1993.** The amended statutory provision permits employers a right of subrogation against third party tortfeasors for amounts that the employer has paid to its employee by way of workers compensation benefits. The Court of Appeals held that the amendment to R.C. **4123.93** was a non-appropriation provision of *Am.* Sb. H.B. No. **107,** the effective date of which the Supreme Court of Ohio stayed until July **7, 1994.** (State ex rel. Ohio AFL-CIO v. Voinovich **(1994), 69** Ohio St.3d **225).**

GENERAL CONTRACTOR - "ACTIVE PARTICIPATION"

Cefaratti v. Mason Structural Steel Company, Inc., Case No. **70971,** Cuy. Cty. App., May **22, 1997.** For Plaintiff-Appellant: David A. Kulwicki, and For Defendant-Appellee: Henry A. Hentemann and J. Michael Creagan. Per Curiam. Dissenting opinion by Diane Karpinski.

Plaintiff was employed by a subcontractor at a construction site. Plaintiff was injured when he fell off an unguarded second floor stairwell. Plaintiff was his company's foreman on the job and had been at the site occasionally in the six months prior to the accident and knew that there was no guardrail on the staircase. However, the defendant general contractor had removed the wooden handrail at some period in time prior to the accident. The removal of the handrail constituted an OHSA violation. In affirming the trial court's grant of summary judgment in favor of the general contractor, the Court of Appeals held that, as a matter of law, the general contractor did not actively participate in the job operation. Judge Karpinski dissented

because the general contractor "had sole control over the safety features" of the immediate work environment in which plaintiff was installing a sprinkler system. Judge Karpinski was of the opinion that the general contractor actively participated in the manner in which the job had to be performed to the extent that the general contractor removed the safety rail and created a temporary safety hazard. Judge Karpinski further stated that "the general contractor abrogated its statutory duty to provide safe-working conditions. Having removed a railing required by OHSA, it behooved the general contractor to provide, at the least, warnings not to work in that area until the railing was returned."

E WITNES ::

Bryant v. Greater Cleveland Regional Transit Authority, Case No. 71108, Cuy. Cty. App., May 1, 1997. For Plaintiff-Appellant: Jeffery S. Watson and For Defendant-Appellee: Cheryl A. Haynes. Opinion by August Pryatel. David T. Matia and Ann Dyke concur.

In this workers compensation appeal, trial was set for July 10, 1996. On June 2, 1996, plaintiff forwarded the expert report of his physician to counsel for the defendant. Plaintiff scheduled the physician's trial testimony for July 5, 1996, by way of videotape. Defendant first identified its expert witness on July l, 1996. Defendant faxed the report of its physician on July **3**, 1996. The videotape testimony of the plaintiff's physician went forward on July 5, 1996. The defendant perpetuated the testimony of its physician on July 8, 1996. Trial went forward on July 10, 1996, with the trial court denying plaintiff's motion to exclude the testimony of the defendant's expert witness. The Court of Appeals affirmed finding that the trial court did not abuse its discretion in permitting the testimony of defendant's expert. The Court of Appeals noted that the trial court never set dates for the exchange of expert reports. However, the Court of Appeals did not address the issue that is posed by Local Rule 21.1 **I**(B) wherein there is a requirement that, unless good cause is shown, all reports must be supplied no later than thirty (30) days prior to trial. Obviously, in the case at bar the report was produced only one week in advance of trial. The Court of Appeals did not engage in any analysis of whether good cause was shown for failure to produce the report earlier.

INSURANCE COVERAGE

Leader National Insurance Company v. Eaton???, Case Nos. 70332 and 70364, Cuy. Cty. App., April 24, 1997. For Plaintiff-Appellee: Ronald B. Lee and Laura M. Foust and For Defendants-Appellants: Thomas L. Jacobs, John V. Scharon and Peter Liviola. Opinion by Diane Karpinski. James D. Sweeney and Patricia Ann Blackmon concur.

Defendant Eaton purchased a commercial vehicle liability insurance policy from Plaintiff Leader National on October 7, 1992. The sole vehicle listed in the policy declarations and used by Eaton in his auto scrap yard business was a 1984 Ford truck. On August 23, 1993, Eaton purchased an inoperable 1982 Chevrolet truck. Eaton renewed the commercial vehicle insurance policy on October 7, 1993. Eaton did not seek coverage for the inoperable 1982 Chevrolet truck or notify Leader National that it owned the 1982 Chevrolet truck. On January 17, 1994, Eaton took the inoperable 1982 Chevrolet truck in for repairs. On January 20, 1994, while the 1982 Chevrolet truck was in the repair shop, Eaton also took the 1984 Ford truck out of service to a service garage for repairs. Eaton had no vehicles in his business for a couple of days. The 1982 Chevrolet truck was repaired on January 22, 1994, before repairs were completed on the 1984 Ford truck. Eaton registered the 1982 Chevrolet truck with the Bureau of Motor Vehicles, obtained temporary thirty (30) day license plates and began using the 1982 Chevrolet truck the same day. On February 1, 1994, the 1982 Chevrolet truck was involved in an accident. A couple of days later the 1984 Ford truck was returned to service from the repair garage. Leader National paid $2,768.25 in property damage as a result of the negligent operation of the 1982 Chevrolet truck. Prior to this payment Leader National did not reserve its sight to deny coverage for the 1982 Chevrolet truck based on Eaton's failure to notify them within thirty (30) days of the date when he acquired the 1982 Chevrolet truck in an inoperable condition. Approximately two weeks after paying his claim, Leader National stated for the first time in a certified letter to Eaton that its handling of the claim was subject to a reservation of rights. Leader National filed a declaratory judgment action in the trial court. The trial court granted summary judgment in favor of Leader National for the reason that the 1982 Chevrolet truck was not a "covered auto" and that Leader had not waived its right to assert this defense. The Court of Appeals noted that there exists authority in Ohio and other jurisdictions that inoperable vehicles do not constitute "motor vehicles" within the meaning of automobile liability insurance policies because no insurable risk exists until such vehicles are operable. If such were the case,

Eaton would only have had to notify Leader National of the 1982 Chevrolet truck by February 21, 1996, thirty (30) days after the 1982 Chevrolet truck had been made operable. However, the Court of Appeals did not need to reach this issue inasmuch as it held that Leader National had waived its right to contest coverage when it did not act to reserve its rights until after payment to the injured party. Payment of a claim of a person injured by an insured, with knowledge of a potential coverage defense and without any reservation of rights, waives the defense. Accordingly, the Court of Appeals reversed the judgment of the trial court.

UNDERINSURED MOTORIST COVERAGE

Oakar v. Farmers Insurance of Columbus, Inc., Case No. 70726, Cuy. Cty. App., April 17, 1997. For Plaintiffs-Appellants: Howard A. Schulman and For Defendant-Appellee: D. John Travis and Gary L. Nicholson. Opinion by Joseph Nahra. Diane Karpinski concurs and John Patton concurs in judgment only.

Plaintiff sustained severe injuries in an automobile accident. In October, 1990, plaintiff informed her uninsured motorist carrier, Farmers, to waive its subrogation rights and authorize her to settle for the $100,000 policy limit under the tortfeasor's policy. Farmers gave its consent and waived its right to subrogation. Later in 1991 plaintiff made a claim against a second alleged tortfeasor. Plaintiff settled with this tortfeasor for the $12,500 policy limit. Also during 1991, plaintiff's carrier, Farmers, had paid $7,500 to the second tortfeasor in a disputed liability claim. After the Supreme Court rendered its decision in Savoie, plaintiff made an underinsured claim with Farmers. Farmers denied underinsured coverage both because retroactive application of Savoie would destroy its vested contractual rights and because plaintiff had failed to obtain Farmers' consent two years earlier when plaintiff had settled with the second tortfeasor for the $12,500 policy limit. The trial court granted Farmers' Motion for Summary Judgment. The Court of Appeals reversed, holding, in the first instance, case law is to be applied retroactively unless the issue in court expressly limits its holding to prospective application (Peerless Electric Company v. Bowers (1959), 164 Ohio St. 209). Accordingly, the Court of Appeals held that Savoie was applicable to the case at bar. Moreover, the Court of Appeals held that plaintiff's failure to obtain Farmers' prior consent to settling her claim against the second tortfeasor was a minor breach of contract because Farmers, having paid the second

tortfeasor on his claim against the plaintiff, foreclosed its right to recover against the second tortfeasor. Additionally, the Court of Appeals noted that the plaintiff acted in good faith in her belief at the time that there was no viable claim for underinsured motorist coverage under the policy after she settled with the first tortfeasor. Because both parties understood the law, as it existed at the time, to preclude a claim, the fact that plaintiff did not inform Farmers of the second settlement had no effect on Farmers' rights because there would be no further payment under the policy and, hence, no funds subject to subrogation. Finally, the fact that the law changed under Savoie and allowed plaintiff to make an underinsured claim could not be utilized to cause plaintiff to suffer a forfeiture of that claim for a breach of contract which had no effect at the time it was made.

LAY OPINION TESTIMONY

Figueroa v. Toys-R-Us Ohio, Inc., Case No. 70463, Cuy. Cty. App., April 3, 1997. For Plaintiff-Appellant: Dennis P. Mulvihill and For Defendant-Appellee: Roger H. Williams. Opinion by Timothy E. McMonagle. Patricia Ann Blackmon and Joseph Nahra concur.

Plaintiff was injured while pushing a shopping cart in which her child was an occupant. The shopping cart struck a ladder causing the cart to turn over. The trial court permitted defendant's store manager to testify that he had conducted experiments with a shopping cart whereby he would walk the cart into a ladder or push the cart down the aisle at the ladder. The defendant's store manager then testified that the cart never tipped over. Furthermore, the defendant store manager testified as to his opinion that it was impossible for the cart to turn over. The Court of Appeals held that admission of such evidence was an abuse of discretion by the trial court. The Court of Appeals conceded that nothing in Evidence Rule 702 could be read to exclude testimony as to the observations of a lay witness as it relates to out-of-court experiments. However, such testimony was subject to two important criteria: first, the lay witness may not testify as to his ultimate opinion but merely as to his observation; second, the out-of-court experiments must be conducted under substantially similar circumstances. In the case at bar, the Court of Appeals held that the out-of-court experiment was not conducted under substantially similar circumstances because of the fact that when the manager attempted to re-create the incident, the shopping cart did not contain a child occupant.

NEW TRIAL

Michaels v. Aden, Case No. 70890, Cuy. Cty. App., March 20, 1997. For Plaintiff-Appellee: Robert D. Wilson and For Defendant-Appellant: Marillyn Fagan Damelio. Opinion by James D. Sweeney. Timothy E. McMonagle and John T. Patton concur.

Plaintiff was involved in a rear end accident with the defendant. Plaintiff incurred in excess of $10,000 in medical bills. Plaintiff presented expert medical testimony as to the nature of her injuries. Defendant stipulated negligence but defended on the issue of proximate causation of damage. It was undisputed that plaintiff's vehicle sustained at least some damage. Defendant's medical expert could not preclude that plaintiff might have some soft tissue injury. The jury returned a verdict in favor of the defendant. The trial court granted plaintiff's motion for a new trial. The Court of Appeals ruled that it was not an abuse of discretion under the facts of the case for the trial judge to grant a new trial because the jury's verdict was against the manifest weight of the evidence.

UNDERINSURED MOTORIST COVERAGE

Miko v. Lincoln National Corporation, Case No. 70826, Cuy. Cty. App., March 6, 1997. For Plaintiff-Appellee: Michael J. Feldman and For Defendant-Appellant: James L. Glowacki. Opinion by David T. Matia. Ann Dyke and Terrence O'Donnell concur.

Plaintiff sustained injuries in a motor vehicle accident. Tortfeasor paid plaintiff his $25,000 liability policy limit. Plaintiff possessed underinsured motorist coverage in the amount of $300,000. The accident occurred prior to the effective date of Senate Bill 20. (Amended R.C. 3937.18(A)). The case proceeded to trial on the issue of proximate causation and damages. The jury was instructed that the plaintiff had received $25,000 from the tortfeasor. However, the trial court gave the jury no instruction as it related to the issue of set off. The jury returned a verdict in favor of the plaintiff in the amount of $98,000. Defendant appealed the trial court's refusal to set off the $25,000 paid to plaintiff by tortfeasor's carrier from the jury's $98,000 award. The Court of Appeals reversed on the basis that at the time of the accident Savoie was the applicable law. Inasmuch as Savoie mandated that such set offs were to be taken from the total amount of the plaintiff's damages rather than the underinsured carrier's policy limit, the $25,000 paid by tortfeasor should have been deducted from the total damages of

the plaintiff as decided by the jury. Interestingly, the Court of Appeals, *in dicta,* stated that had Senate Bill 20 been in effect at the time of this accident, the verdict for $98,000 would have been payable in full to the plaintiff because under amended R.C. 3937.18(A) the set-off is from the underinsured policy limit rather than from the total amount of plaintiff's damages.[1]

REDUCTION OF EXPERT WITNESS FEE

Wrona v. Jaros, Case No. 310595, Cuy. Cty. Court of Common Pleas, May 2, 1997. For Plaintiff, Jean M. McQuillan and Brian N. Eisen and For Defendant: Jan Roller. Decision by Judge Carolyn Friedland.

In the above case the trial judge granted plaintiff's motion to reduce the hourly deposition fee charged by Robert Corn, M.D., from $900 per hour to $300 an hour.

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[1]The *dicta* in the Miko decision should serve as interesting fodder for those interested in finding a potentially beneficial effect as to the rights of injured parties from the passage of Senate Bill 20. For example, if tortfeasor pays a liability policy limit of $100,000 to plaintiff and plaintiff presents an underinsured claim against her $300,000 underinsured policy limit and the jury returns a verdict finding plaintiff's damages to be $101,000, does the *dicta* in Miko indicate that under Senate Bill 20 the plaintiff is entitled to receive the full $101,000 of the jury's verdict without set off of the $100,000 paid by tortfeasor's carrier?

VERDICTS AND SETTLEMENTS

Sixty-Year Old Housewife v. Family Practice. M.D.
Court and Judge: Wayne County
Settlement: July, 1996
Plaintiffs Counsel: John G. Lancione, LANCIONE & SIMON
Defendant's Counsel: Not available
Insurance Company: Not available
Type of Action: Medical Malpractice.

Failure to make timely diagnosis of an acoustical neuroma resulting in multiple brain surgeries. Controversy over whether time delay was 9 months as plaintiff claimed or 4 months as defendant claimed which resulted in a question of how much damage actually resulted from the delayed diagnosis.

Damages: Partial paraparesis
Plaintiffs Experts: Kevin Ferentz, M.D. (Baltimore, MD)
Defendant's Experts: Thomas Flynn, M.D. (Baton Rouge, La.)
Settlement: $600,000.00

Kevin Baker v. Arnco Corp.
Court and Judge: Lorain County Common Pleas; Judge Glavas
Settlement: July, 1996
Plaintiffs Counsel: Michael Becker, BECKER & MISHKIND and John A. Lancione, LANCIONE & SIMON
Defendant's Counsel: Donald Worthing
Insurance Company: Not Listed
Type of Action: Employer intentional tort

Employer required plaintiff to extract sample of puddy by hand from mixing vat while mixing blades were rotating.
Damages: Traumatic amputation of all five digits of dominant right hand.
Plaintiffs Experts: Dick Hayes (occupational safety)
Defendant's Experts: None
Settlement: $965,000.00

Insured motor vehicle operator v. Uninsured Motorist
Court and Judge: Cuyahoga County Common Pleas; Judge Daniel Gaul
Settlement: August, 1996
Plaintiffs Counsel: John G. Lancione, LANCIONE & SIMON
Defendant's Counsel: Not available
Insurance Company: Not available
Type of Action: Bad faith claim against insurance company based on failure to offer settlement.

Insurance company refused to make a settlement offer claiming the plaintiffs injuries were the result of pre-existing conditions. Arbitration held resulting in an amount of $780,000.00.

Damages: As above.
Plaintiffs Experts: Dr. Robert Daroff (Cleveland, Ohio)
Defendant's Experts: Dr. Kenneth Callahan (Cleveland, Ohio.
Settlement: 300,000.00

Two In-jured Passenger and One Wrongful Death v. Careless Insurance Trucking Co., et al
Court and Judge: Cuyahoga County Common Pleas
Settlement: September, 1996
Plaintiffs Counsel: John G. Lancione & Pamela Pantages of LANCIONE & SIMON
Defendant's Counsel: Reminger & Reminger
Insurance Company: St. Paul
Type of Action: Rear end collision on I-480 at night.

Injured plaintiffs were a 45 year old driver with back and neck injuries, a 70 year old women with fatal injuries

Damages: Decedent was a 72-year old woman survived by two non-dependent adult daughters.
Plaintiffs Experts: Dr. Tim Nice
Defendant's Experts: Dr. John Gardner
Settlement: $1,275,000.00.

Acalacia patient v. Thoracic Surgeons of West Virginia
Court and Judge: Ohio County, West Virginia
Settlement: September, 1996
Plaintiffs Counsel: John G. Lancione of LANCIONE & SIMON; Richard L. Lancione of LANCIONE, DAVIS & LLOYD
Defendant's Counsel: Not available
Insurance Company: P.I.E.
Type of Action: Medical Malpractice.

Plaintiff claimed defendants should have referred the patient to a specialist at a tertiary medical center which would have resulted in a better result. Patient did ultimately have a total esophagectomy and colonic interposition at the Cleveland Clinic.

Damages: Failed partial esophagectomy on severe acalacia patient requiring multiple corrective surgeries.
Plaintiffs Experts: Dr. Gary Silver (Palo Alto, California)
Defendant's Experts: Dr. Geoff Greaber (Charleston, West Virginia)
Settlement: $150,000.00

Craft v. Portsmouth Raceway Park. Inc.
Court and Judge: U.S.D.C. (Southern) Judge Sherman
Settlement: October, 1996
Plaintiffs Counsel: John A. Lancione, LANCIONE & SIMON
Defendant's Counsel: Donald Ansbaugh
Insurance Company: K & K
Type of Action: Negligence race track design

Plaintiff was a spectator at race track. While sitting in grandstand one of the race cars propelled a rock into the spectator area striking plaintiff in left eye.

Damages: Perforated cornea and cornea transplant. Decreased visual acuity.
Plaintiffs Experts: Douglas Ruth, P.E.
Defendant's Experts: None
Settlement: $265,000.00

Khristal Kramer v. Joseph Antichow, O.D.
Court and Judge: Lorain County, Judge Thomas Janas
Settlement: October, 1996
Plaintiffs Counsel: John **A.** Lancione, LANCIONE & SIMON; Michael F. Becker
Defendant's Counsel: Harry Sigmier
Insurance Company: Westfield Insurance
Type of Action: Medical Malpractice.

Defendant optometrist failed to diagnose amblyopia in plaintiffs eye at age 6, resulting in permanent loss of vision.

Damages: Loss of vision in left eye.
Plaintiffs Experts: Ronald Price, M.D. (Pediatric ophthalmology)
Defendant's Experts: Paulette Schmidt, O.D.; Gregory Hicks, O.D.
Settlement: Judgment: $300,000.00; Offer: $30,000.00; Demand: $250,000.00.

Raymond C. Srail v. RJF International Corn.
Court and Judge: Cuyahoga County Common Pleas; Judge Pat Kelly
Settlement: October 11, 1996
Plaintiffs Counsel: Ellen S. Simon and Christopher P. Thorman, LANCIONE & SIMON
Defendant's Counsel: Kathleen Keough/Todd Palmer
Insurance Company: None
Type of Action: Age discrimination/wrongful discharge.

Plaintiffs long term, superb employees, claimed that RJF discriminated against them when the company closed its research facility and failed to place them into open positions as promised. Instead the company hired inexperienced or substantially less qualified much younger men into open technical positions.

Damages: Lost income and benefits; emotional distress.
Plaintiffs Experts: Dr. John Burke
Defendant's Experts: Not Listed
Settlement: Judgment: $2,066,000.00 and attorney fees; offer $230,000.00; demand: $550,000.00.

John Doe, et al v. ABC Corporation
Court and Judge: Cuyahoga County; Judge Robert Feighan
Settlement: November, 1996
Plaintiffs Counsel: Edison H. Hall, Jr., HALL & HALL
Defendant's Counsel: Confidential
Insurance Company: Self-insured
Type of Action: Industrial Accident - Third Party Claim.

Plaintiff was being lowered from a cleaning duct inside a dumpster which was on top of a forklift. the dumpster was overloaded. The combined weight of the debris and the plaintiff caused the dumpster to tip off the forklift. Plaintiff was thrown to the ground and injured.

Damages: Permanent back injuries, disabled.
Plaintiffs Experts: John Burke, Ph.D. (economics); George Cyphers (vocational); Richard Kaufman, M.D. (treating physician - orthopedics); George Bombyk (safety)
Defendant's Experts: Not listed
Settlement: $1,000,000.00

Administratrix v. Family M.D. and Cardiologist
Court and Judge: Medina County
Settlement: November, 1996
Plaintiffs Counsel: John G. Lancione & Pamela Pantages - LANCIONE & SIMON
Defendant's Counsel: Not available.
Insurance Company: Not available.
Type of Action: Medical Malpractice.

Decedent was an unemployed SO-year-old married male with three college age children presented to his family M.D. with cardiac symptoms and was referred to a cardiologist who found evidence of serious heart disease. Neither doctor followed up with treatment and patient died four months later. Defendants claimed decedent failed to follow up on their advice.

Damages: Death.
Plaintiffs Experts: Kevin Ferentz, M.D. (Baltimore, Maryland)
Defendant's Experts: None
Settlement: $550,000.00

DePaul v. Cleveland Air Comfort. et al
Court and Judge: Cuyahoga County Common Pleas; Judge Michael Corrigan
Settlement: November, I996
Plaintiffs Counsel: Charles Kampinski and Chris Mellino
Defendant's Counsel: Murray Lenson, James Barnhouse, Al Stevens and Walter Matchinga
Insurance Company: Heritage and CNA
Type of Action: Personal Injury

Defendants negligently installed and maintained a pool heater and furnace in the DePaul's basement. In May of 1995, one of the defendants negligently installed an air filtering system in the furnace. The pool heater produced carbon monoxide fumes which were distributed through the house through the furnace system causing the plaintiffs to sustained carbon monoxide poisoning and brain damage.

Damages: Carbon monoxide poisoning.
Plaintiffs Experts: Howard Tucker, M.D. (neurologist); Joseph Prahl (engineer); and Frederick Cramer, M.D. (hyperbaric medicine).
Defendant's Experts: Lynn Weaver, M.D. (hyperbaric medicine)
settlement: $2,980,000.00

Joan Roe v. OB/GYN Company
Court and Judge: Scioto County - Judge Boyer
Settlement: November, 1996
Plaintiffs Counsel: John G. Lancione & Pamela Pantages - LANCIONE & SIMON
Defendant's Counsel: Not available
Insurance Company: Not available
Type of Action: Medical Malpractice.

Plaintiff, a young female, sought medical advice for a lump on her breast. Defendants diagnosed cystic changes over a period of six months before making a diagnosis of Stage III breast cancer. Surgery revealed 14 or 15 positive nodes. Plaintiff claimed early detection would have resulted in improved morbidity and mortality prognosis.

Damages: See above.
Plaintiffs Experts: Dr. Hillard Lazarus
Defendant's Experts: Dr. McCarty
Settlement: $600,000.00

John Doe v. ABC Company
Court and Judge: Federal Court/N.D. Ohio (No Judge)
Settlement: November, 1996
Plaintiffs Counsel: Ellen S. Simon & Christopher P. Thorman - LANCIONE & SIMON
Defendant's Counsel: John Reed/Joel Hralty
Insurance Company: Not listed.
Type of Action: Wrongful discharge.

Long-term employee lost position in reduction of work force. Responsibilities given to younger less qualified employee.

Damages: Difference between what plaintiff earned at company and what he earns now in consulting business.
Plaintiffs Experts: None
Defendant's Experts: None
Settlement: $225,000.00

John Doe v. Physicians Co.. Inc.
Court and Judge: Lorain County Common Pleas Court
Settlement: December, 1996
Plaintiffs Counsel: John G. Lancione & Pamela Pantages - LANCIONE & SIMON
Defendant's Counsel: Not available
Insurance Company: Not available
Type of Action: Medical Malpractice

Plaintiff sought medical attention for low back and hip pain. Diagnosis was ruptured disk and surgery was performed. Thereafter hip pain returned and hip infection discovered but damage required a hip replacement. Defendants claimed the disk diagnosis was reasonable and earlier discovery of hip infection could not have been made.

Damages: Hip replacement.
Plaintiffs Experts: Dr. Charles Clark
Defendant's Experts: Dr. Timothy Nice
Settlement: $400,000.00

Maher v. Union Hospital
Court and Judge: Tuscarawas County; Judge Roger Lile
Settlement: December, 1996
Plaintiffs Counsel: John A. Lancione - LANCIONE & SIMON
Defendant's Counsel: William Kyler; Tom Treadon
Insurance Company: Not applicable
Type of Action: Medical Malpractice/Wrongful Death

Decedent was admitted to ICU for chest pain. The ICU nurses failed to notify the attending physician when patient began to have symptoms suggesting acute myocardial infarction. Death due to complications from acute MI.

Damages: Death of 61 year old with three adult children surviving.
Plaintiffs Experts: Claude Brachfeld, M.D. (cardiologist)
Defendant's Experts: None
settlement: $300,000.00

Georgia Huggins v. Federal Equipment Co.. et al
Court and Judge: Cuyahoga County Common Pleas; Judge Pokorny
Settlement: December, 1996
Plaintiffs Counsel: John C. Meros
Defendant's Counsel: Kenneth Zirm
Insurance Company: Not Applicable
Type of Action: Intentional Tort.

Defendant employer instructed untrained plaintiff to clean around an extruder machine, equipped with guillotine-cuter blade at discharge end. Machine was left on by co-worker during cleaning procedure with blade exposed. Plaintiff unknowingly activated unguarded blade.

Damages: Four finger amputation.
Plaintiffs Experts: Mark Cocco (machine guarding), Gary Robinson, Inc., Tequesta, Florida
Defendant's Experts: Donald Wandling, P.E., Ames, Iowa
Settlement: Confidential (Note: Summary judgment for employer reversed on appeal).

John Doe v. XYZ Company
Court and Judge: Federal Court/N.D. Ohio
Settlement: January, 1997
Plaintiffs Counsel: Ellen S. Simon; Christopher P. Thorman - LANCIONE & SIMON
Defendant's Counsel: David Holcombe; Joy Evans
Insurance Company: None
Type of Action: Wrongful Discharge.

Plaintiff was long term African American employee. one of a group of operators selected for termination when new equipment was installed. Plaintiff claimed he was selected because of his race and that he worked in a racially hostile environment.

Damages: Lost income and benefits, emotional distress.
Plaintiffs Experts: Dr. John Burke
Defendant's Experts: None
Settlement: $950,000.00

May Doe v. Dr. X
Court and Judge: Cuyahoga County Common Pleas
Settlement: January, 1997
Plaintiffs Counsel: Howard D. Mishkind, BECKER & MISHKIND
Defendant's Counsel: Susan Reinker
Insurance Company: PIE
Type of Action: Medical Malpractice.

Plaintiff, a 75 year old woman, underwent endoscopic discectomy for a far lateral disc herniation. Following surgery, the patient developed urinary incontinence which was initially diagnosed as overflow incontinence. She was later diagnosed with detrusor hyperreflexia.

At the time of plaintiffs surgery, the pathology report showed nerve root fibers.

Plaintiff underwent surgery to correct her urinary incontinence but has been left with permanent bladder dysfunction requiring self catheterization.

Plaintiff alleged that defendant, during the course of the endoscopic surgery, injured nerves that controlled bladder function leading to her urinary incontinence. Defendant argued that the surgery that he performed was done appropriately and that the nerve distribution that controls bladder function was not in any way involved in the defendant's surgery. Defendant further alleged that plaintiff a diabetic with multiple level degenerative disc disease, either had urinary incontinence prior to the surgery or developed the incontinence for reasons primarily related to her underlying disease processes and was not due to substandard care on his part.

Damages: Urinary incontinence.
Plaintiffs Experts: Dr. Clyde Nash (orthopedic surgeon); Dr. Rodney Appel (female urology)
Defendant's Experts: Dr. Jerry Blaivas (urology); Dr. Barton Sachs (orthopedics).
Settlement: $268,000.00

Jane Doe. Admin. v. ABC Hospital
Court and Judge: Cuyahoga County Common Pleas; Judge Boyko
Settlement: January, 1997
Plaintiffs Counsel: Charles Kampinski
Defendant's Counsel: Robert Tucker and John Jackson
Insurance Company: Not Listed
Type of Action: Medical Malpractice

Decedent was an unmarried 19-year-old admitted to defendant hospital for childbirth. She delivered a normal, healthy infant, but her vital signs began deteriorating post-operatively. Her blood pressure was dropping, her heart rate was increasing and her hematocrit had dropped precipitously. This occurred over a three hour period of time. The defendant doctor left the hospital without examining or treating the decedent. Decedent was bleeding internally, causing the decline in vital signs. Residents took the decedent to surgery and blood was ordered, but not received for over one hour. Decedent arrested during the surgery and died several hours later.

Damages: Failure to treat the deteriorating vital signs, failure to provide blood in a timely manner and decedent's private physician abandoned her at a time when she was critically ill.
Plaintiffs Experts: Melvin Ravitz, M.D.
Defendant's Experts: Don Schafer, M.D.
Settlement: For the Demand, $5,000,000.00

Paulis, Exr. v. Meridia Euclid Hospital, et al
Court and Judge: Cuyahoga County Common Pleas; Judge Stuart Friedman
Settlement: February, 1997
Plaintiffs Counsel: Michael Djordjevic
Defendant's Counsel: Cheryl O'Brien; Pat Murray
Insurance Company: PIE
Type of Action: Medical Malpractice.

Plaintiffs decedent was admitted for a colonoscoppy and colectomy at Meridia Euclid Hospital under the care of Richard Neinczura, M.D. and pulmonologist consultant Donald Epstein, M.D. Defendant physicians failed to provide adequate prophalyxsis for D.V.T. Patient died of massive pulmonary embolus 4 days after surgery.

Damages: Death, pain and suffering
Plaintiffs Experts: Edward Panacheck, M.D.
Defendant's Experts: Joseph Sopko, M.D. (pulmonologist); Paul Priebe, M.D. (surgeon)
Settlement: Confidential

Robert Burgess v. University Mednet, Inc.. et al
Court and Judge: Cuyahoga County Common Pleas; Judge William Mahon
Settlement: March 13, 1997
Plaintiffs Counsel: Edison H. Hall, Jr. & Mary Elaine Hall
Defendant's Counsel: S. Peter Vourdouris
Insurance Company: P.I.E.
Type of Action: Medical Malpractice.

Failure to treat a diabetic in time.

Damages: Amputation of three toes
Plaintiffs Experts: Sidney Fink, M.D., Hampton, Va. (internal medicine)
Defendant's Experts: Thomas Dell, M.D., Ann Arbor, MI. (internal medicine)
Settlement: Jury Verdict: $150,000.00

Alstrash, et al. v. Adler
Court and Judge: Cuyahoga County Common Pleas; Judge Robert Feighan
Settlement: March, 1997
Plaintiffs Counsel: Francis E. Sweeney, Jr.
Defendant's Counsel: Bruce Rinker
Insurance Company: State Farm
Type of Action: Automobile Accident.

Intersection accident with disputed liability. Each party claimed right-of-way. Jury determined defendant 65% negligent and plaintiff 35% negligence.

Damages: Soft tissue injuries to husband, wife and 2 children. Wife sustained minor scar on neck and right shoulder.
Plaintiffs Experts: Dr. Louis Maggiore; Dr. Rodney Greene
Defendant's Experts: None
Settlement: Judgment: $39,000.00; offer: $10,000.00; Demand: $35,000.00 before jury empanelment.

Jane Doe. Executrix v. John Doe. Inc.
Court and Judge: Trumbull County
Settlement: March, I997
Plaintiffs Counsel: Peter H. Weinberger and Stuart E. Scott - SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Michael Hudak
Insurance Company: PIE
Type of Action: Medical Malpractice/Wrongful Death

In 1988, plaintiffs decedent was worked up for peptic ulcer disease. **A** barium x-ray showed a filling defect in the cecum. Four years later, cancer was diagnosed at the same location. Malpractice claim was based on the defendant's failure to follow-up on the x-ray results with a colonoscopy. Defendant claimed he discussed the colonoscopy with patient who refused. Plaintiff claimed medical records were altered.

Damages: Metastatic colon cancer.
Plaintiffs Experts: Hadley Morganstern-Clarren, M.D.; David Ettinger, M.D.; Albert Lyter - ink expert.
Defendant's Experts: Robert Kuranz, M.D. - ink expert.
Settlement: $1,450,000.00

Barney Klement, et al v. Kopf Construction Corp.
Court and Judge: Lorain County Common Pleas
Settlement: March, 1997
Plaintiffs Counsel: Howard D. Mishkind - BECKER & MISHKIND CO., L.P.A.
Defendant's Counsel: Tom Betz
Insurance Company: CNA
Type of Action: Premises liability - fall at a new home construction site.

Plaintiff, a 69 year old building inspector for the City of Avon Lake, fell 10 to 12 feet through an opening in a first floor new home construction site that did not have appropriate barriers around the opening.

Damages: Compression fracture of L3
Plaintiffs Experts: Dr. Gale Hazen
Defendant's Experts: Dr. Gordon
Settlement: $162,500.00

Smith v. Mapstone, M.D.
Court and Judge: Cuyahoga County Common Pleas; Judge Ralph McAllister
Settlement: March, 1997
Plaintiffs Counsel: Michael M. Djordjevic
Defendant's Counsel: John Jackson and Steve Hupp
Insurance Company: PIE Mutual
Type of Action: Medical Malpractice.

Defendant neurosurgeon failed to timely react to loss of right median nerve. Somato-sensory evoked potential response resulting in injury.

Damages: Partial quadriparalysis following neurosurgery
Plaintiffs Experts: Karl Manders, M.D.
Defendant's Experts: Arnold Menezes, M.D.
Settlement: Judgment: $4,500,000.00.

Irvin E. Selman, et al v. Gastroenterology Assoc. of Cleveland, Inc.. et al
Court and Judge: Cuyahoga County Common Pleas No. 293774
Settlement: March 27, 1997
Plaintiffs Counsel: Paul M. Kaufman
Defendant's Counsel: Unavailable
Insurance Company: Unavailable
Type of Action: Medical Malpractice.

The plaintiff, a 94 year old man, was admitted to Mt. Sinai Hospital in Cleveland with symptoms and complaints indicating the presence of a gallstone. During the first three to four days of the hospital confinement, the plaintiff showed signs of improvement both clinically and based upon blood and urine studies. Despite the improvement from a clinical and laboratory standpoint, the defendant, Dr. Jack Lissaur, a gastroenterologist, took the plaintiff in for an ERCP procedure to determine the presence or absence of a gallstone. During the ERCP procedure, no gallstone could be definitely identified and the radiologist who was present during the procedure indicated that the filling defect that was seen could either be a gallstone or an air bubble. In spite of the fact that the filling defect could not be reproduced nor a gallstone could be definitely identified, Dr. Lissaur then proceeded to perform a sphincterotomy on Mr. Selman. During the course of the sphincterotomy, Dr. Lissaur perforated Mr. Selman's bowel. Mr. Selman was discharged from the hospital the following day and a few days later became very ill and was returned to the hospital where he remained for one month with the diagnosis having been made of the perforation. He subsequently required the placement of a stent and multiple hospital confinements in between confinements at a nursing home. Some 3-1/2 years later, Mr. Selman is basically confined to his home and has great difficulty even leaving his bed. He was age 90 at the time of the original procedure and is presently age 94. He was retired at the time of this occurrence.

The allegations of liability include the performance of the sphincterotomy under circumstances that indicated that Mr. Selman had probably already passed a stone and with no definitive diagnosis of a gallstone present.

Sub issues of liability involve the premature release of Mr. Selamn from the hospital and a delay in placing the stent after he did return for subsequent confinement. In addition to the damages stated herein, Mr. Selman has incurred hospital, medical, surgical, visiting nurse and nursing home changes exceeding $125,000.00.

The defendant's defenses were that it was entirely appropriate to perform the sphincterotomy, that Mr. Selman was discharged properly and that the stent was placed at the appropriate time.

Damages: See above
Plaintiffs Experts: John Fromkes, M.D. (gastroenterologist)
Defendant's Experts: John Marshall, M.D. (gastroenterologist)
Settlement: Jury verdict for $525,000.00. A Motion for Prejudgment Interest is pending.

Alexander Gigliotti. Etc. v. George Bescak. D.O.. et al
Court and Judge: Lorain County Common Pleas No. 95CV115285
Settlement: March, 1997
Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Medical Malpractice.

Wrongful death case against an internist due to failure to diagnose coronary artery disease.

Damages: Wrongful death.
Plaintiffs Experts: Alan Feit, M.D. (cardiologist); Hadley Morganstern-Clarren, M.D. (internal medicine)
Defendant's Experts: Withheld
Settlement: $550,000.00

Christy, et al v. Daniel Rzepka, M.D.
Court and Judge: Cuyahoga County Common Pleas Court; Judge Nancy Fuerst
Settlement: March, 1997
Plaintiffs Counsel: Joel Levin and John Huettner; NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Joseph Farchione
Insurance Company: PIE
Type of Action: Medical Malpractice.

Plaintiff in for exploratory surgery and improperly given a tubal ligation. Now at increased health risks, and required to use in vitro fertilization.

Damages: Sterilization.
Plaintiffs Experts: Samuel Smith, M.D.; Sheryl A. Kingsberg, M.D.
Defendant's Experts: James Coldfarb, M.D.
Settlement: Judgment: $1,500,000.00

Vincent L. Kopp, Exec., et al v. Mohammed Naeem, M.D.
Court and Judge: Lorain County Common Pleas Court No. 95CV114154
Settlement: April, 1997
Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Medical Malpractice.

Wrongful death action against a family physician due to failure to diagnose ischemic heart disease. The decedent had other medical conditions at the time of her death.

Damages: Wrongful death.
Plaintiffs Experts: Alan Feit, M.D. (cardiologist)
Defendant's Experts: Withheld
Settlement: $450,000.00

Confidential
Court and Judge: Cuyahoga County Common Pleas
Settlement: April, 1997
Plaintiffs Counsel: Peter H. Weinberger and William Hawal - SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Joseph Farchione and Stephen Walters
Insurance Company: PIE/St. Paul
Type of Action: Medical Malpractice/Wrongful Death

After gall bladder surgery for a necrotic gall bladder, decedent was placed in a medical surgical floor where she suffered respiratory distress, wasn't timely intubated, and the intubation failed.

Damages: Wrongful death.
Plaintiffs Experts: Mark Eckhuaser, M.D. (surgeon); David Woodruff, R.N. (nurse).
Defendant's Experts: David Sherman, M.D. (pulmonologist); Sheldon Traeger M.D. (critical care medicine); and Richard Schlanger, M.D. (surgeon)
Settlement: $1,125,000.00.

Lisa Levine v. Albert Lucci
Court and Judge: Cuyahoga County Common Pleas; Judge Mary Boyle
Settlement: May 21, 1997
Plaintiffs Counsel: Daniel M. Sucher
Defendant's Counsel: Laura Swersinger
Insurance Company: Allstate
Type of Action: Automobile Accident.

Defendant ran red light. Liability admitted. Plaintiffs left knee hit dashboard.

Damages: Chondromalacia of left knee.
Plaintiffs Experts: Donald Goodfellow, M.D.
Defendant's Experts: Robert Corn, M.D.
Settlement: Judgment: $100,000.00; offer $10,000.00/$20,000.00 (week before trial); demand $40,000.00

James M. Kastelic, etc. v. Hospital, Skilled Nursing Facility, Nursing Home, Doctor
Court and Judge: Cuyahoga County Common Pleas Court
Settlement: May, 1997
Plaintiff's Counsel: Dennis R. Lansdowne, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: John R. Scott, Christine S. Reid, Douglas K. Fifner
Insurance Company: Not Listed
Type of Action: Negligence

This case involves the failure to meet basic standards of care and as to defendant Skilled Nursing Facility and defendant Nursing Home, violations of decedent's rights under Ohio's Nursing Home Residents Bill of Rights.

An 80-year-old man, upon admission to defendant Hospital, had a skin assessment of "good and unremarkable." Decedent suffered a cerebral vascular accident and thereafter developed a pressure ulcer. Due to hospital personnel's repeated negligence in their failure to respond promptly and appropriately, despite specific direction from the plastic surgery service, decedent's ulcer worsened and additional ulcers developed.

Upon transfer to defendant Skilled Nursing Facility, decedent endured more of the same neglect with development of more pressure ulcers, again, despite plastic surgery notes to provide this man decent care.

Upon transfer to defendant Nursing Home, decedent was suffering from at least five separate ulcers and the care here was deplorable and decedent's pressure sores worsened and he developed additional ulcers resulting in eight serious sores. Decedent was literally rotting away.

Defendant Doctor had an obligation to follow up on decedent's condition at defendant Nursing Home and he did not.

Upon transfer to an Ohio Veterans Home, decedent began to receive appropriate care and his condition improved. Decedent died of causes unrelated to the pressure ulcers.

Defendants challenged the punitive damage provisions of the Nursing Home Residents Bill of Rights on constitutional grounds. The Court rejected that challenge. Briefs are available from plaintiff's counsel upon request.

Damages: Development of severe pressure ulcers.
Plaintiff's Experts: Claude S. Burton, M.D. (dermatologist)
Defendant's Experts: Edward A. Luce, M.D. (plastic & reconstructive surgery); Carl A. Culley, Jr., M.D.; Janice G. Murphy, R.N., B.S.N., M.S.N.
Settlement: $467,500.00

Birdie Watkins. et al v. Cleveland Clinic Foundation
Court and Judge: Cuyahoga County Common Pleas; Judge Pokorny
Settlement: June 11, 1997
Plaintiffs Counsel: Charles Kampinski and Chris Mellino
Defendant's Counsel: John Jackson II.
Insurance Company: Not Listed
Type of Action: Medical Malpractice.

Plaintiff, Birdie Watkins, a 58 year old female, was a patient of Dr. Eliachar's for sinus problems. Dr. Eliachar was an employee of the Cleveland Clinic.

Dr. Eliachar recommended to plaintiff that she have elective surgery on her nose to correct a deviated septum. Mrs. Watkins specifically asked Dr. Eliachar if he would perform the surgery. He assured her that he would. However, Dr. Eliachar did not perform or participate in the surgery. Instead, he had a resident do the surgery in his absence. The anesthesiologist left the surgery immediately after it began, leaving plaintiff in the hands of the resident, and a nurse anesthetist. Plaintiff was never informed that this would occur.

At the conclusion of the surgery, plaintiff was taken off the ventilator before the effects from the anesthesia had been completely reversed. She immediately began having difficulty breathing but no treatment was given until she suffered a cardiac arrest from lack of oxygen. Dr. Eliachar was very familiar with when a patient should be removed from the ventilator, however the resident had no knowledge of this whatsoever.

Birdie Watkins suffered brain damage from the lack of oxygen to her brain as a result of being taken off the ventilator too soon. She has been in a persistent vegetative state since the surgery on May 5, 1995, and currently requires 24 hour nursing care.

Defendants committed a fraud and battery by failing to inform Mrs. Watkins that a resident would be performing the surgery on his own. The plaintiff was taken off the ventilator prematurely.

Defendant admitted liability on the day of trial. They denied that fraud or battery occurred alleging that the plaintiff did not have a right to know who would be performing her surgery since this was a teaching institution.

Damages: Persistent vegetative state.
Plaintiff's Experts: John Burke, Ph.D. (economist); William Berger, M.D. (anesthesiologist); George Cyphers (rehabilitation counselor).
Defendant's Experts: Donald Mann, M.D. (neurologist).
Settlement: Gross Verdict: $14,460,000.00; $10,960,000.00 (compensatory) and $3,500,000.00 (punitive); Post judgment: Motions pending.

Vernon Kolenda. et al v. United States of America
Court and Judge: U.S.D.C., Northern Dist. of Ohio; Judge Nugent
Settlement: June, 1997
Plaintiffs Counsel: Leon M. Plevin and Ellen M. McCarthy, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Annette Butler
Insurance Company: Not Applicable
Type of Action: Motor Vehicle Accident.

Rear end collision with a nine ton U.S. Postal truck. Defendant disputed liability claiming that a phantom vehicle caused the postal truck to rear end the plaintiff while travelling 40 p.m.

Damages: Cervical disc herniation at C-5-6 and C-6-7; compression fracture L-3 and impotence.
Plaintiffs Experts: Donald C. Mann, M.D. (neurologist); Robert B. Ancel, Ph.D. (vocational rehab.); and John F. Burke, Jr. Ph.D. (economist)
Defendant's Experts: Lynn Myers, M.D. (physical medicine)
Settlement: Judgment: $657,686.10

Joseph Durka, etc., et al v. Kaiser Permanente, et al
Court and Judge: Cuyahoga County Common Pleas Court
Settlement: June, 1997
Plaintiffs Counsel: William Hawal, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Gary H. Goldwasser
Insurance Company: Withheld
Type of Action: Medical Malpractice.

Plaintiff delivered by emergency c-section due to fetal distress. Defendant failed to initiate EFM in post-date pregnancy and delayed c-section. Child believed to be developing normally until entered school.

Damages: Learning disability.
Plaintiffs Experts: Stuart Edelberg, M.D.; Cynthia Griggins, M.D.
Defendant's Experts: William F. Rayburn, M.D.; David Rothner, M.D.
Settlement: $500,000.00

Jill Redding v. Travelers Insurance Co.
Court and Judge: Cuyahoga County Common Pleas
Settlement: June, 1997
Plaintiffs Counsel: William Hawal, SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Henry Hentemann
Insurance Company: Travelers
Type of Action: Auto-pedestrian Accident.

Underinsured driver struck a truck, causing it to strike a police car on berm which, in turn, was pushed into plaintiff walking beside car.

Damages: Degloving injury to left leg resulting in loss of calf muscle and skin below knee, fibula and ankle fracture.
Plaintiffs Experts: Gordon Bennett, M.D.; Michael Parker, M.D.
Defendant's Experts: Robert Corn, M.D.; James Scarcellla, M.D. (plastic surgeon); John Fink, M.D. (vascular surgeon)
Settlement: $1,000,000.00

John Doe v. Atlantic Southeast Airlines. Delta Airlines and United Technologies
Court and Judge: U.S. District Court, Northern District of Georgia, Atlanta
Settlement: June, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: AAU
Type of Action: Aviation

Plaintiff was a passenger on board an Embraer 120 Turboprop aircraft operated by Atlantic Southeast Airlines (Delta Commuter). While in cruise flight, there was a violent separation of one of the left engine propellers due to fatigue failure which consequently resulted in loss of the No. 1 engine. The crew attempted to make an emergency landing during which time the aircraft crashed in a farm near Carrollton, Georgia resulting in complete breakup and destruction of the aircraft by fire and the death of numerous passengers.

Damages: PTSD, torn cruciate ligament right knee.
Plaintiffs Experts: Dr. Cynthia Hatherall (orthopedics); Dr. Donald Goodfellow (orthopedics); Dr. Delphi Toth (psychologist)
Defendant's Experts: Withheld.
Settlement: $900,000.00

Bob Doe v. Atlantic Southeast Airlines, Delta Airlines and United Technologies
Court and Judge: U.S. District Court, Northern District of Georgia, Atlanta
Settlement: June, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: AAU
Type of Action: Aviation

Plaintiff was a passenger on board an Embraer 120 Turboprop aircraft operated by Atlantic Southeast Airlines (Delta Commuter). While in cruise flight, there was a violent separation of one of the left engine propellers due to fatigue failure which consequently resulted in loss of the No. 1 engine. The crew attempted to make an emergency landing during which time the aircraft crashed in a farm near Carrollton, Georgia resulting in complete breakup and destruction of the aircraft by fire and the death of numerous passengers.

Damages: PTSD, deep laceration left hand.
Plaintiffs Experts: Dr. Neal Morris (psychologist); Dr. Cathleen Godzik (orthopedics)
Defendant's Experts: Withheld.
Settlement: $400,000.00

James Doe v. Atlantic Southeast Airlines. Delta Airlines and United Technologies
Court and Judge: U.S. District Court, Northern District of Georgia, Atlanta
Settlement: June, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: AAU
Type of Action: Aviation

Plaintiff was a passenger on board an Embraer 120 Turboprop aircraft operated by Atlantic Southeast Airlines (Delta Commuter). While in cruise flight, there was a violent separation of one of the left engine propellers due to fatigue failure which consequently resulted in loss of the No. 1 engine. The crew attempted to make an emergency landing during which time the aircraft crashed in a farm near Carrollton, Georgia resulting in complete breakup and destruction of the aircraft by fire and the death of numerous passengers.

Damages: PTSD, rib fracture, soft tissue spinal injuries and loss of prospective executive position.
Plaintiffs Experts: Dr. Robert Selverstore (psychologist); Dr. Gary Solomon (orthopedics).
Defendant's Experts: Withheld.
Settlement: $1,500,000.00

Estate of Dr. John Smith v. USAir. Inc., et al
Court and Judge: U.S. District Court - Western Pennsylvania - Judge Standish
Settlement: June, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: AAU
Type of Action: Aviation/Wrongful death.

Decedent was a passenger on USAir Flight 427 which crashed near Pittsburgh, PA. on September 8, 1994. The cause of the crash remains undetermined. However, it is believed that the aircraft which was on final approach to Pittsburgh International Airport departed from controlled flight as a result of an uncommanded rudder deflection precipitated by design defect within the rudder power control unit. The decedent was survived by his wife and three adult children.

Damages: Wrongful death.
Plaintiffs Experts: Dr. James Kenkel (economist)
Defendant's Experts: Withheld
Settlement: $2,725,000.00

Estate of Dr. John Doe v. USAir. Inc.. et al
Court and Judge: U.S. District Court - Western Pennsylvania; Judge Standish
Settlement: June, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Withheld
Insurance Company: AAU
Type of Action: Aviation/Wrongful Death.

Decedent was a passenger on USAir Flight 427 which crashed near Pittsburgh, PA. on September 8, 1994. The cause of the crash remains undetermined. However, it is believed that the aircraft which was on final approach to Pittsburgh International Airport departed from controlled flight as a result of an uncommanded rudder deflection precipitated by design defect within the rudder power control unit. This case was subject to the Warsaw Convention which limited the liability of USAir to $75,000.00. Decedent was survived by his second wife and minor child and three adult children from a prior marriage.

Damages: Wrongful death.
Plaintiffs Experts: Dr. Raymond Schultz (economist); Dr. Rona Schwartz (psychologist)
Defendant's Experts: Not listed
Settlement: $1,975,000.00

Kathryn Stewart v. MetroHealth Medical Center
Court and Judge: Cuyahoga County Common Pleas; Judge Nancy McDonnell
Settlement: July 3, 1997
Plaintiffs Counsel: Charles Kampinski and Christopher Mellino
Defendant's Counsel: Gary Goldwasser
Insurance Company: Confidential
Type of Action: Medical Malpractice.

Mr. Stewart, 37, was admitted to MetroHealth Hospital on February 17, 1996, to be treated for a fracture of his facial bones. A well known complication of this type of fracture is meningitis. Mr. Stewart was admitted the Friday before a holiday weekend (President's weekend) and was not seen by an attending physician. After Saturday morning, his condition deteriorated, however, it never occurred to the residents to test for or treat Mr. Stewart for meningitis. The meningitis killed Mr. Stewart on February 20, 1996. He is survived by his wife, four minor children, parents, brother and sister.

Damages: Wrongful death.
Plaintiffs Experts: John Burke, Ph.D. (economist); Calvin Kunin, M.D. (internal medicine); Donald Myers, M.D. (neurosurgeon).
Defendant's Experts: Thomas Flynn, M.D. (neurosurgeon).
Settlement: Judgment: $8,006,000.00.

Laura M. Howard. etc., et al. v. Clifford D. Button
Court and Judge: Summit County Common Pleas; Judge M. Callahan
Settlement: July, 1997
Plaintiffs Counsel: Richard C. Alkire, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Alton Stephens
Insurance Company: CNA Insurance
Type of Action: Auto; Wrongful Death.

Decedent was situated as a passenger in the automobile operated by his wife. Defendant failed to yield the right of way to plaintiff and pulled into her path after stopping on an exit ramp.

Damages: Trauma to decedent's spinal cord resulting in C4 quadriplegia due to cervical cord contusion. A decompression laminectomy of the cervical spine C3 to C6 was performed and decedent thereafter went through protracted rehabilitation ultimately dying from the sequela of these injuries some 4 months later.
Plaintiffs Experts: John F. Burke, Jr. Ph.D. (economist); Kenneth McCarty, M.D. (internist/pathologist); Robert Senkar (accident reconstructionist).
Defendant's Experts: Richard Watts, M.D. (cardiologist)
Settlement: $1,700,000.00

Archer v. The ABC Hospital
Court and Judge: Cuyahoga County Common Pleas
Settlement: July, 1997
Plaintiffs Counsel: Michael F. Becker, BECKER & MISHKIND
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Wrongful death/Medical Malpractice.

Obstetrical negligence resulting in a stillborn death of a full-term infant. Settlement contribution from both the attending obstetrician as well as the hospital.

Damages: Wrongful death.
Plaintiffs Experts: Martin Gimovsky, M.D. (OB/GYN)
Defendant's Experts: Withheld
Settlement: $450,000.00

Sanjay Lall v. Huntington Willard
Court and Judge: Cuyahoga County Common Pleas
Settlement: July, 1997
Plaintiffs Counsel: Howard D. Mishkind, BECKER & MISHKIND
Defendant's Counsel: Walter Krohngold
Insurance Company: State Farm
Type of Action: Automobile Accident.

Rear-end collision with minimal property damage.

Damages: Chronic pain syndrome (chronic cervical and lumbar strain), minimal disc bulge c3-4.
Plaintiffs Experts: Dr. Jung Yoo (orthopedic surgeon); Dr. Tarvez Tucker (neurologist)
Defendant's Experts: Dr. Robert Corn (orthopedist)
Settlement: Judgment: $20,000.00

John White, et al v. Ethel W. Derick, Executrix of Estate of Milford R. Derick, dec'd, et al,
Court and Judge: Cuyahoga County Common Pleas Court; Judge Nancy Russo
Settlement: July, 1997
Plaintiffs Counsel: Jamie R. Lebovitz, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Margaret Mary Meko
Insurance Company: United States Aviation Underwriters
Type of Action: Aviation.

Plaintiff was a passenger in Beechcraft Baron which crashed on take off from Burke Lake Front Airport into Lake Erie on November 19,1995.

Damages: Multiple compound fractures to left leg, right leg, spine, facial fractures and other injuries.
Plaintiffs Experts: Richard Taylor (pilot); Dr. Cynthia Wilhelm (life care/vocational); Dr. Frederic Frost (physical medicine/rehabilitation); Dr. John Davis (orthopedic); Dr. Brendon Patterson (orthopedic); Dr. Michael Bosse (orthopedic); Dr. warren Prendergast (psychiatry); Dr. John Burke (economist).
Defendant's Experts: Dr. Loretta Peterson (physical medicine); Ms. Debra Lee (vocational).
Settlement: Judgment: $7,045,000.00 ($1,015,000.00 awarded to plaintiffs wife for loss of consortium).

Cheetah Super Sulky, Inc. v. United States Trotting Assoc.
Court and Judge: U.S.D.C., Northern Dist. of Ohio; Judge David Dowd
Settlement: July, 1997
Plaintiffs Counsel: Joel Levin, John Huettner and Kathleen St. John, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Chester, Willcox & Saxbe
Insurance Company: Not applicable.
Type of Action: Antitrust, tortious interference with contract.

Plaintiff sued for violation of the Sherman Antitrust Act and for tortious interference with contract after the United States Trotting Association banned plaintiffs harness racing sulky or "bike" from harness tracks. The jury found that the USTA had conspired with at least one manufacturer in enacting the ban.

Damages: Above
Plaintiffs Experts: Michael J. Zeleznik; Spector & Saulino
Defendant's Experts: Albert Voudro; Price Waterhouse.
Settlement: Judgment: $650,000 x treble = $1,950,000.00.

Allen Phillips v. Thomas & Betts Holdings. Inc.. et al.
Court and Judge: Cuyahoga County Common Pleas Court; Judge J. Villanueva
Settlement: July, 1997
Plaintiff's Counsel: Richard C. Alkire, NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Michael Bertsch, James F. Sweeney
Insurance Company: Aetna - stop gap; CNA - product liability
Type of Action: Employer intentional tort/product liability.

Plaintiff was injured on a die cat machine rebuilt by Die-Tech Industries, Ltd. when the die halves closed while he was removing a part. The employer had removed a switch originally supplied by the rebuilder associated with interlocking the operator door and replaced it with a switch which could be bumped by the operator and which would allow the dies to close with the operator gate open. The employer claimed it didn't have the requisite knowledge to be liable for an employer intentional tort and product liability manufacturer blamed the employer for the accident because it removed the originally supplied switch which if present would have prevented the accident.

Damages: Crush injury to right dominant hand with amputation of right index finger.
Plaintiffs Experts: Simon Tamny, P.E.; Rod Durgin (vocational Rehab); Lee Hang-Fu, M.D.
Defendant's Experts: William R. Keefe, P.E.; Stanley Nahigian, M.D.
Settlement: $175,000.00