# Cleveland Academy of Trial Attorneys

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JAN. 1999

Editors: Paul V. Wolf, Esq./Romney Cullers, Esq.

## PRESIDENT'S MESSAGE:

P.T.E. Seminar: A capacity crowd attended the P.I.E. Seminar on 12/11/98. Many thanks to our speakers, Gerry Leeseburg, Mike Becker and Cliff Masch. There was an agreement among those in attendance to share approaches to OIGA coverage issues. If you have briefs/rulings to share on QIGA claim limit issues, or if you need briefs, please mail copies or requests to me at my office.

Luncheon Seminars: For those last-minute substance abuse credits, our next luncheon seminar will be on 12/29/98 with Jim Columbro. Jim is one of the most effective speakers in Cleveland on the subject -- a far cry from the video repeats!

Bernard Friedman Litigation Institute: Mark your calendars! The BFI will be held on February 19, 1998 at the Marriott Key Center. Bob Linton has arranged for a nationally known group of speakers on litigation issues. We are co-sponsoring this event with the OATL. Registration information will be mailed shortly.

HB 350: OATL is maintaining a database of HB 350 decisions. I have attached a submission form if you have something to submit, and the web address for the QATL site where you can access the information. Don't miss in the case summaries the recent 8th District opinion, Crowe v. Owens Corning, 10/29/98 holding unconstitutional the provisions of HB 350 regarding punitive damages and reinstating a $2,500,000.00 punitive damage award.

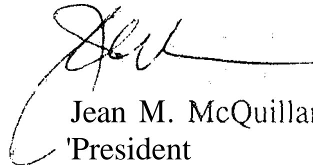
Amicus Briefs: The CATA has submitted an amicus brief in the Supreme Court case of Waite v. Progressive Insurance Co., Case No. 98-146Z, challenging the constitutionality of Am. Sub. HB 20 -- the law re-writing Ohio's insurance laws on uninsured/underinsured coverage after Savoie v. Grange Mutual Ins. Co. Our thanks to Mark Ruf for writing this excellent brief.

Contact me if you would like a **copy.**

The CATA also submitted, and the 8th District Court of Appeals accepted, our amicus brief in the prohibition cases dealing with Judges Gaul and Russo's discovery orders against Dr. Robert Corn (Case Nos. 75045 and 75349). Contact me if you would **like** a copy.

New Members: CATA welcomes Joan Ford, Tony Nuccio, Christian Patno, Ron Rosenfield, Joe Farchione and John L. Goodman as new members.

Sincerely,



Jean M. McQuillan,
'President

## FINAL APPEALABLE ORDERS

The Ohio Leitina Company v. Vandra Brothers Construction, Inc., Cuy. Co. App. No. 72616 (September 3, 1998). For Plaintiff-Appellant: Owen C. Neff and For Defendant-Appellee: Patrick F. Roche. Opinion By: Kenneth A. Rocko. Terrence O'Donnell and Diane Karpinski dissent.

Sitting en banc the Court of Appeals took the occasion of a motion to dismiss to clarify their previously conflicting decisions as to whether in a multi-defendant and/or multi-claim case a grant of summary judgment could be converted into a final appealable order by the filing of an Ohio Civil Rule 41(A) voluntarily dismissal without prejudice as to all of the remaining defendants and/or claims.[1] The majority of the Court of Appeals held that such a dismissal pursuant to Ohio Civil Rule 41(A) does indeed render the judgment as to the defendant or claim a final appealable order for purposes of appeal. In reaching this decision the majority of the Court of Appeals relied upon the formal guidelines it adopted in 1993 which stated that the process described above does render a final appealable order for purposes of appeal. Judges O'Donnell and Karpinski dissented upon the ground that the guidelines adopted in 1993 were never properly promulgated and, hence, have no legal or authoritative value because they conflict with the Ohio Constitution, the Ohio Revised Code, the Ohio Rules of Civil Procedure and certain published case authority. In particular, Judge O'Donnell reasoned that Ohio Civil Rule 41(A) only authorizes the dismissal of an "action." Conversely, Ohio Civil Rule 54 deals with dismissal of claims. The clear implication for Judge O'Donnell is that Ohio Civil Rule 41(A) permits only dismissal of actions or, in other words, of "the whole case." While in general agreement with Judge O'Donnell's dissent, Judge Karpinski noted that the precise issue was pending before the Ohio Supreme Court in Ferro Corporation v. Blaw-Knox Food and Chemical Equipment Company, 82 Ohio St.3d 468 (1998).

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[1]Obviously, the argument pre-supposes that the Trial Court did not include Ohio Civil Rule 54(B) language stating that there **is** "no just reason for delay" from the judgment.

## UNINSURED MOTORIST COVERAGE - STATUTE OF LIMITATIONS

Veloski v. State Farm Mutual Auto insurance Company, Cuy. Co. App. No. 74059 (September 10, 1998). For Plaintiff-Appellant: Joseph R. Gioffre and Michael S. Schroeder and For Defendant-Appellee: Joseph R. Wantz. Per Curiam.

Plaintiff sustained injury on July 14, 1992, when an unidentified driver ran her off the road. It is apparently undisputed that there was no physical contact between plaintiffs vehicle and that which was driven by the unidentified driver. At the time of the accident the governing law of State Auto Mutual Insurance Company v. Rowe, 28 Ohio St.3d 143 (1986), had upheld the validity of underinsured motorist policy exclusions which required physical contact between the insured's vehicle and a hit and run vehicle as a prerequisite to accessing uninsured coverage. Four years after the accident herein, the Ohio Supreme Court reversed Rowe and held that policy provisions which require physical contact as a prerequisite to recovery under uninsured motorists provisions are against public policy as long as there is corroborating evidence of the tortfeasor's negligence. Girgis v. State Farm Mutual Automobile Insurance Company, 75 Ohio St.3d 302 (1996).

After the Supreme Court's decision in Girais, plaintiff herein filed an uninsured motorist claim approximately four years after the accident arguing that the retroactive application which was required to be given to case law entitled access to uninsured coverage in this particular case. The Court of Appeals upheld a grant of summary judgment on the theory that despite any retroactive application to be given Girgis, the applicable statute of limitations contracted for in the insurance contract was two years. Thus, plaintiffs uninsured motorist claim was time barred. The Court of Appeals refused to extend a discovery rule in order to toll the statute of limitations under the circumstances of this case.

## MEDICAL MALPRACTICE - STATUTE OF LIMITATIONS

Marshall v. Ortega, Cuy. Co. App. No. 72096 (October 8, 1998). For Plaintiff-Appellant: Scott I. Levey, Frank P. Giaimo and Ronald B. Peltz and For Defendant-Appellee: Forrest A. Norman, III. Opinion by Terence O'Donnell.

Plaintiff transmitted a 180 day notice letter to the defendant doctor well within one year of the discovery of a potential malpractice action. One month later, just before the one year statute of limitations would expire the plaintiff sent a second 180 day letter. Plaintiff then filed suit against the defendant doctor more than 180 days

after the first letter was sent but within 180 days of the second notice. Under these circumstances, the Court of Appeals reversed a grant of summary judgment in favor of the defendant because, as the Court noted, a statute of limitation is remedial in nature and is to be given a liberal construction to permit the deciding of cases upon their merits. Since Revised Code Section 2305.11(B)(1) affords a claimant an opportunity to obtain a maximum of a 180 day extension of time in which to file a medical malpractice lawsuit by giving notice on the last day of the one year period, it is remedial in nature and should be construed to encourage case decision on the merits and, thus, no penalty should be imposed for giving notice at any earlier time. Further, there exist nothing in the statute which would preclude a claimant from giving more than one notice provided that all such notices be given prior to the expiration of the original one year period of the statute of limitations. Hence, the effect of successive letters of notice is not to extend the statute of limitations but to afford flexibility to counsel to prepare and commence litigation at a time when counsel can best be prepared to do so. Judge Nahra's concurring opinion noted that a different interpretation would in many cases lead to the one year statute of limitations being shortened. Clearly, this would be an unintended result of the statute permitting the one year statute of limitation to be extended by the transmittal of a 180 day notice letter.

## PREMISES LIABILITY - PREJUDGMENT INTEREST

Pritt v. Edward J. DeBartalo Corporation, Cuy. Co. App. Nos. 72730/73872 (October 8, 1988). For Plaintiff-Appellee: Paul V. Wolf (Dubyak & Goldense) and Edward S. Molnar and For Defendant-Appellee: Michael L. Golding and Timothy R. Cleary. Opinion by James M. Porter.

Defendants appealed from a jury verdict in favor of the plaintiff in the amount of $138,000.00. Defendant argued that the Trial Court should have granted its motion for judgment notwithstanding the verdict. Defendant was a Chic-Fil-A fast food store located in the Randall Park Mall wherein employees would walk in the common area of the mall passing out chicken samples. Although disputed, plaintiff produced evidence that crumbs and grease from the chicken samples had fallen to the floor in the area where plaintiff sustained her fall. The Court of Appeals affirmed the judgment of the Trial Court and expressly rejected defendant's argument that it owed plaintiff no duty of care inasmuch as it did not have possession, control or any possessory interest in the premises upon which plaintiff sustained her fall. The Court of Appeals recognized that the present action was, in reality, not a premises liability action but an instance where employees of a defendant failed to exercise ordinary care for the safety of others regardless of who was the owner or occupier of any premises. Moreover, defendant's argument that it did not have notice of a dangerous condition upon the premises was

rejected because a defendant who actively creates a hazardous condition upon a premises can not later argue that it did not have notice of the dangerous condition which it created. The Trial Court further upheld the Trial Court's grant of prejudgment interest where there existed evidence that the defendant failed to provide the whereabouts of an employee witness and where the defendant made only a $5,000.00 offer in the face of a $75,000.00 demand where the claims file reflected that defendant's counsel evaluated the claim as being worth between $50,000.00 and $75,000.00

**SLIP AND FALL - OPEN AND OBVIOUS**

Zaslov v. May Department Stores, Cuy. Co. App. No. 74030 (October I , 1998). For Plaintiff-Appellant Dennis P. Murray and For Defendant-Appellee Roy A. Hulme and Michelle J. Sheehan. Per Curiam.

Stark v. Glenmore Properties Ltd. Partnership, Cuy. Co. App. No. 73470 (October 15, 1998). For Plaintiff-Appellant James D. Shelby and For Defendant-Appellee Laura M. Faust and Ronald B. Lee. Opinion by Joseph J. Nahra.

LeJeune v. Crocker Shell Food Mart and Car Wash, Cuy. Co. App. No. 74262 (October 22, 1998). For Plaintiff-Appellant: Michael W. Sandwisch and For Defendant-Appellee: Marilyn F. Damelio. Per Curiam.

Recently, the Supreme Court of Ohio decided Texler v. D.O. Summers Cleaners and Shirt Laundry Company, 81 Ohio St.3d 677 (1998). Texler originated in the Cuyahoga County Court of Common Pleas and involved a situation wherein the plaintiff tripped upon a bucket that was propping open a door. The door and bucket extended midway into the sidewalk of a strip shopping center. The trial resulted in a verdict in favor of the plaintiff in the amount of $75,000.00. Further, the jury found the defendant 100% negligent. The Court of Appeals took away the plaintiffs verdict and entered judgment for the defendant under the auspices of the "open and obvious" doctrine. The Court of Appeals in Texler stated that the open and obvious doctrine relieves the defendant from owing any duty to the plaintiff where an alleged defective or dangerous condition is both open and obvious to the plaintiff. The Supreme Court of Ohio reversed and reinstated Mrs. Texler's verdict. The Supreme Court went on to hold that the issue of whether Mrs. Texler should have seen the bucket is one which goes to the issue of the comparative negligence of the plaintiff rather than whether the defendant owed plaintiff a duty of care in the first instance. The Supreme Court also cited prior case law to the effect that while a plaintiff has a duty to exercise reasonable care for her own safety she is not, as a matter of law, required to look downward at the ground

in a continuous manner. In the trio of cases noted above, Texler was applied to reverse grants of summary judgment by the trial court based upon the "open and obvious" doctrine. In Stark, the open and obvious doctrine was applied by the Trial Court under circumstances where plaintiff stepped into a very large and very visible hole in a driveway. In Zaslov, the open and obvious doctrine was applied by the Trial Court under circumstances where the plaintiff rode his bicycle into a large pothole in a parking lot. In both instances, the Trial Court cited Texler in reversing the grant of summary judgment. In both Zaslov and Stark, the Court of Appeals ruled that the issue of whether the defects were open and obvious was a jury question going to the issue of the plaintiff's comparative negligence. In LeJeune, the Court of Appeals upheld the Trial Court's granting of summary judgment without any mention of Texler. However, LeJeune can be distinguished from Zaslov and Stark because there was no real defect in the premises in LeJeune. Thus, the issue of whether the defect was open and obvious was a non-starter because there was no real defect in the first instance.

## INSURANCE COVERAGE - PERMISSIVE USE

Drake v. State Farm Insurance Company, Cuy. Co. App. No. 73502 (October 15, 1998). For Plaintiff-Appellant: Thomas Mester and Kathleen J. St. John and For Defendant-Appellee: Cornelius J. O'Sullivan. Opinion by Joseph J. Nahra.

The Trial Court granted summary judgment to State Farm upon plaintiff's claim for injuries finding that the driver of the motor vehicle was not a permissive user. The insured had permitted her mother to drive the insured vehicle to a bar. At the bar, the mother had too much to drink and another individual who was known to the mother and the bar maid wound up driving the insured car with the mother in the passenger's seat. The mother testified that she had no recollection of the evening in question and could not say for sure if she gave the other bar patron consent to drive the insured's vehicle. Apparently, neither the bar maid or the bar patron who wound up driving the vehicle could be located and, as a result were unable to testify. The Court of Appeals reversed citing the Ohio Supreme Court decision in West v. McNamara, 159 Ohio St. 187 (1953), where it was held that absent an express prohibition by the owner of the car, coverage extends to the permittee of a permittee of the named insured, where the last permittee drives the car in the presence of the named insured or the first or second permittee; or, the last permittee drives the car in the interest of or for a purpose mutual to such driver and the named insured or his permittee. In the case at bar, there was no evidence of an express prohibition by the owner of the vehicle. Moreover, the bar patron drove the vehicle in the presence of the first permittee and in the interests of the first permittee.

## UNDERINSURED MOTORIST COVERAGE

Leslie v. Nationwide Insurance Company, Cuy. Co. App. No. 73319 (October 22, 1998). For Plaintiff-Appellant: Lewis W. Einbund and David W. Skall and For Defendant-Appellee: Timothy D. Johnson, Gregory E. O'Brien and Daniel A. Richards. Opinion by Timothy E. McMonagle.

Appellant's decedent was killed in a multi-car collision in southern Ohio on February 24, 1990, during a winter snow storm. The decedent was a passenger in a car driven by a Mark Nordquist, who also died as a result of the injury sustained in the accident. The accident was determined to be the result of the negligence of several drivers, including Mr. Nordquist. At the time of the accident, plaintiff had in full force and effect a policy of automobile insurance with Nationwide providing uninsured motorists coverage of $100,000.00 per person and $300,000.00 per occurrence. Later in 1990, appellant settled with Mr. Nordquist's insurer for $100,000.00, the apparent policy limit of Mr. Nordquist's liability coverage. Also in late 1990, appellant filed a complaint in the United States District Court for the Southern District of Ohio against additional parties whose negligence was alleged to have contributed to the death of appellant's decedents. Indeed, it appears that many claims of various individuals were presented in the District Court. The District Court Magistrate determined the value of each claim, including the wrongful death claim of appellant's decedent. While the value of this claim was determined to be $300,000.00, the available pool of insurance proceeds from which the funds were to be disbursed allocated only $62,000.00 to the plaintiff. In March of 1995, prior to the consolidated settlement, plaintiff notified Nationwide that she would be making a claim for underinsured motorist benefits. Nationwide denied coverage on the basis that appellant had failed to protect Nationwide's subrogation rights by previously settling with Mr. Nordquist's insurer without notice to Nationwide. Plaintiff then filed a declaratory judgment action against Nationwide seeking a declaration that plaintiff was entitled to underinsurance coverage. The Trial Court granted Nationwide's Motion for Summary Judgment finding that the plaintiffs five year delay in notifying Nationwide of any claim for underinsured coverage was in contravention of the policy of insurance requiring the insured to protect Nationwide's subrogation rights by giving prompt notice of any claim. On appeal plaintiff argued that the law at the time of plaintiffs settlement with Mr. Nordquist's insurer did not allow for an underinsured claim because plaintiffs settlement with the tortfeasor's insurer was for the same amount as the coverage limits contained within plaintiffs policy. Plaintiff argued that it was only after the Ohio Supreme Court's decision in Savoie v. Granae Mutual Insurance Company, 67 Ohio St.3d 500 (1993), that she had a claim for underinsurance benefits. Since case law acts retroactively, plaintiff claims that she was entitled to underinsurance benefits up to the $300,000.00

per occurrence limits despite not having given notice of the earlier settlement. The Court of Appeals upheld the grant of summary judgment on the basis of the recent Supreme Court of Ohio decision in Ross v. Farmers Insurance Group, 82 Ohio St.3d 281 (1998), wherein the Supreme Court stated that for the purpose of determining the scope of coverage of an underinsured motorist claim, the statutory law in effect at the time of entering into a contract for automobile liability insurance controls the rights and duties of the contracting parties. Accordingly, since the statutory law in effect at the time of plaintiff's decedent's accident preduded a claim for underinsured motorist benefits, any subsequent change in the law would have no effect on the insured's eligibility for underinsured benefits if the statutory law at the time of contracting did not afford such benefits. The Court of Appeals seemed reluctant to apply the Supreme Court's decision, perhaps because on its face the syllabus law of Ross would tend to emasculate the principle that case law is entitled to retroactive application. The Court of Appeals' decision contained the following statement: "We express no opinion as to the merits of appellant's argument absent the Supreme Court's decision in **Ross**."

## AGE DISCRIMINATION - STATUTE OF LIMITATIONS

Oaker v. Ameritech Corporation, Cuy. Co. App. No. 72556 (December 10, 1998). For Plaintiff-Appellant: Niki Z. Schwartz and Eleanor Stifel, II and for Defendants-Appellees: Janette M. Louard and Robert M. Wolff. Opinion by Joseph J. Nahra.

In November of 1994 plaintiff, a 17 year attorney employed in Ohio Bell's legal department was informed that that department would be disbanded in January of 1995. Plaintiff was further informed that while other attorneys in Ohio Bell's legal department would be considered for a position with Ameritech's new centralized legal department, that he would not be hired by Ameritech and he would remain in his position until January of 1995 when Ohio Bell's legal department would be dispanded. In January of 1995 plaintiff continued to work at Ameritech as a non-managing employee while he searched for work as an attorney. On April 11, 1995, a younger attorney was hired by Ameritech. Plaintiff filed a complaint for age discrimination pursuant to Ohio Revised

Code Section 4112.02(N) and Revised Code Section 4112.99. This complaint was filed on June 29, 1995. Former Revised Code Section 4112.02(N)[2] carried a 180 day statute of limitations. The Court of Appeals affirmed the Trial Court's grant of summary judgment based upon the statute of limitations. Curiously enough, the Court of Appeals found that under former Revised Code Section 4112.02(N) that plaintiffs cause of action accrued on November 9, 1994, when he was informed that he would not be hired for one of the attorney positions in the centralized legal department. These positions were to be filled in January of 1995. According to the Court's majority, the plaintiff had until May 9, 1995, to file his age discrimination claim under former Revised Code Section 4111.02(N). Thus, the Court of Appeals reasoned that the statute of limitations accrued when he was informed that he would not be hired for a position that would go into effect in January of 1995. Judge Karpinski dissented finding that prior Ohio case law mandates that a cause of action for age discrimination accrues when the plaintiff suffers present injury. These cases, as pointed out by Judge Karpinski, hold that the statute of limitations begins to run when an unlawful act accrues and not upon advance notice of the act. Judge Karpinski pointed out that the Ohio Supreme Court has stated that a cause of action does not accrue until such time as the infringement of a right arises. It is at this point that the time within which a cause of action is to be commenced begins to run. The time runs forward from that date, not in the opposite direction, and thus when one's conduct is not presently injurious, a statute of limitations begins to run against an action for consequential injuries resulting from such act only from the time that actual damage ensues. (Board of Education of Lordstown Local School District v. Ohio Civil Rights Commission, 66 Ohio St.2d 252, 256-257 (1981).

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[2]The various different statutes of limitations which apply to various employment discrimination claims under the Ohio statutory scheme was changed when House Bill 350 was enacted into law. Under House Bill 350 a two year statute of limitations governs all Ohio statutory employment discrimination claims.

## SEXUAL HARASSMENT

Hampel v. Food Ingredients Specialties, Cuy. Co. App. No. 73143 (October 29, 1998). For Plaintiff-Appellee: Ellen S. Simon and Christopher P. Foreman and For Defendant-Appellant: Irene C. Kese-Walker.

Plaintiff won a large jury verdict against the defendant. One of plaintiff's claims sounded in sexual harassment. The jury was presented with certain interrogatories. The jury responded in the affirmative to an interrogatory which inquired as to whether the complained of conduct would unreasonably interfere with the work performance of a reasonable person or create an intimidating, hostile or offensive work environment for that reasonable person. Plaintiff was a male employee and his supervisor who was also male engaged in a barage of offensive sexually tinged verbal behavior on one particular day. Plaintiff stated that at the end of his shift he went to the supervisor's office to inform the supervisor that he felt degraded, humiliated and offended. The supervisor told plaintiff, "if you don't like it, quit." Upper management issued a written warning to the supervisor but the latter continued as plaintiff's supervisor. Three days later the supervisor gave plaintiff a verbal warning, criticizing plaintiff for doing a poor job. Thereafter, plaintiff testified that the supervisor was constantly "nit-picking" and refusing to allow plaintiff to take shortcuts other employees were permitted. Moreover, plaintiff testified that his work was subject to more careful scrutiny than other employees by this particular supervisor. Plaintiff applied for two other positions with the defendant but did not get either. In January of 1996, plaintiff was offered and accepted a position on the day shift. However, plaintiff was informed by another employee that the former supervisor had stated that he was going to follow plaintiff to the day shift. The other employees assured plaintiff that the former supervisor was not kidding. Upper management conducted another investigation and told plaintiff there was no proof the former supervisor had told other employees he was going to follow plaintiff to the day shift. Immediately thereafter, during the same month, plaintiff obtained psychiatric assistance. On March 7, 1996, he took a medical leave of absence. In May of 1996 he resigned from his employment. Plaintiff's psychiatrist testified that plaintiff suffered from post-traumatic stress disorder, depression and severe emotional distress as a direct result of the April 1995 incident. Based upon these facts, the Court of Appeals reversed the Trial Court's entry of judgment upon the verdict and ordered that judgment be entered in favor of the defendant upon the sexual harassment claim. The Court of Appeals based its reversal upon the recent United States Supreme Court decision in Oncale v. Sundowner Off-Shore Services, Inc., ____ U.S. ______, 140 L.Ed. 2d 201, 118 S. Ct. 998 (1998). The Court of Appeals was of the opinion that the Oncale holding that the prohibition of harassment on the basis of sex "forbids only behavior so objectively offensive as to alter the conditions of the victims employment" was not met under the facts of the case at bar. Conduct that **is** not

severe or pervasive enough to create an objectively hostile or abusive work environment, an environment that a reasonable person would find hostile or abusive, is beyond Title VII's purview." In short, the Court of Appeals found that while the supervisor's conduct may have constituted work place harassment it was not enough to state that it was necessarily discrimination because of sex. The fact that the words used have sexual content or connotations does not automatically imply sexual discrimination. Moreover, the Court of Appeals found that a reasonable finder of fact could not have found the supervisor's conduct to be so objectively offensive as to alter the conditions of plaintiff's employment.[3]

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[3] A copy of the decision which contains the specific verbal abuse which was rendered to plaintiff in the case will be made available upon request.

REQUEST PUBLICATION

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF *CUYAHOGA*

NO. 73206

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| ROBERT P. CROWE | | |
| PLAINTIFF-APPELLANT | : | JOURNAL ENTRY |
| v. | : | AND |
| OWENS CORNING FIBERGLAS | : | OPINION |
| DEFENDANT-APPELLEE | : | |

DATE OF ANNOUNCEMENT OF DECISION: OCTOBER 29, 1998

CHARACTER OF PROCEEDING: Civil appeal from Common Pleas Court, No. CV-196050.

JUDGMENT: REVERSED.

DATE OF JOURNALIZATION: ______________________

APPEARANCES:

For Plaintiff-Appellant:

Michael V. Kelley, Esq.
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| | |
|---|---|
| For Defendant-Appellee Owens Corning Fiberglas (Continued): | Randolph C. Wiseman, Esq.<br>Stephen C. Gray, Esq.<br>Bricker & Eckler, L.L.P.<br>100 South Third Street<br>Columbus, OH 43215-4291 |
| For *Amicus Curiae* Ohio Alliance for Civil Justice: | Sarah J. DeBruin, Esq.<br>Kurtis A. Tunnell, Esq.<br>Bricker & Eckler, L.L.P.<br>100 South Third Street<br>Columbus, OH 43215-4291 |

TIMOTHY E. McMONAGLE, P.J.:

Plaintiff-appellant Robert P. Crowe appeals the decision of the Cuyahoga County Court of Common Pleas wherein the trial court directed the verdict in favor of defendant-appellee Owens Corning Fiberglas on appellant's claim for punitive damages after trial by jury. For the reasons stated below, we reverse the decision of the trial court and reinstate the **jury** verdict of **$2,500,000** levied against appellee as punitive damages.

On August 30, 1990, appellant initiated the instant action against appellee, among other defendants, alleging that as a result of his exposure to asbestos-containing products he developed the disease of asbestosis. On May **21,** 1997, the matter proceeded to jury trial against appellee, the only remaining defendant. Appellee moved for directed verdict pursuant to the statutory directive found in R.C. 2315.21(D)(3)(a) which limits the amount of punitive damages which may be awarded against a single entity for the same occurrence asserting no liability remained against it for punitive damages. The jury returned a verdict in favor of appellant on his claims awarding him compensatory damages in the amount of $85,000 and $2,500,000 in punitive damages which was journalized by the court on August 20, **1997.** Hearing was held on appellee's motion for directed verdict after briefing the issues and appellee's submission of the documentation required by the

statute to demonstrate that punitive damages in excess of the statutory limitation have been paid. The trial court granted appellee's motion for directed verdict on appellant's punitive damage claim by identical journal entries entered on August 20 and 21, 1997. Appellant timely appeals the trial court's grant of directed verdict on his claim for punitive damages and advances a single assignment of error for our review.

> I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE OWENS CORNING FIBERGLAS' MOTION FOR A DIRECTED VERDICT ON PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES BASED UPON OHIO REVISED CODE SECTION ("R.C.") 2315.21(D)(3) *AND* 2315.21(G) (8/20/97 ORDER AND 8/21/97 ORDER).

In his sole assignment of error, appellant contends that the trial court erred in granting appellee's motion for directed verdict on his claim for punitive damages based upon R.C. 2315.21(D)(3) and (G). Specifically, appellant asserts that 2315.21(D)(3) may not be applied retroactively and, further, appellant asserts that appellee's motion for directed verdict granted pursuant to the mandate of R.C. 2315.21 (D)(3)(a) is improper where it can be shown that the statutory provision is unconstitutional. Appellant challenges the constitutionality of R.C. 2315.21(D)(3)(a) asserting that the statute violates the following provisions of the Ohio Constitution: Section 5, Article I (right to a jury trial); Section 16, Article I (Due Process,

right to remedy- and open courts); and Section 2, Article I (Equal Protection). In response, appellee asserts that R.C. 2315.21 (D)(3) does not affect appellant's substantive rights, it is remedial and it was intended by the legislature to be applied retroactively. In addition, *amicus curiae* urges affirmance for the Ohio Alliance for Civil Justice. Both appellee and *amicus curiae* contend that the statute does not violate any *of* appellant's constitutional rights. For the reasons that follow, we hold R.C. 2315.21(D) (3)(a) to be unconstitutional under each *of* the foregoing constitutional provisions and hold that the statute affects a substantive right and may not be applied retroactively. Consequently, we find that the grant of a motion for directed verdict on appellant's punitive damage claim entered pursuant to the mandate *of* this statutory section is reversible error.

On January 25, **1997,** Am.Sub.H.B. No. 350 ("H.B. 350"), Ohio's tort reform legislation, became effective. However, in R.C. 2315.21 (G), the General Assembly stated its intent to have the statutory sections be applied retroactively as remedial legislation and provided a's follows:

> Except for divisions (C) and (D) **(1)** and **(2)** of this section, this section shall be considered to be purely remedial in its operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the civil action is pending in court or commenced on or after

> the effective date of this section, regardless of when the cause of action accrued and notwithstanding any other provision of statute or prior rule of law of this state.

The trial court found R.C. 2315.21(G) and (D)(3) to be constitutional and, as a consequence of the application of R.C. 2315.21(G), the trial court found R.C. 2315.21(D)(3) to be properly applied retroactively to the matter *sub judice*.

R.C. 2315.21(D)(3)(a) provides in pertinent part:

> In any tort action *** [p]unitive or exemplary damages shall not be awarded against any defendant if that defendant files with the court a certified judgment, judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and have been collected, in any state or federal court, against that defendant based on the same act or course of conduct that is alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages and that the aggregate of those previous punitive or exemplary damage awards exceeds one hundred thousand dollars, or if the defendant is a large employer, two hundred fifty thousand dollars.

Because we find appellant's constitutional challenge of this statute to be dispositive of the within appeal, we first review the statutory section at issue, R.C. 2315.21(D)(3)(a), to determine whether the statute violates a fundamental right as guaranteed to appellant by the Ohio Constitution without advancing a compelling state interest.

We recognize that all legislative enactments enjoy a strong presumption of constitutionality. *Austintown Township Board of Trustees* **v.** *Tracy* **(1996), 76** Ohio St.3d 353; see, also, R.C. **1.47.** A statute will be declared invalid only if it appears beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. Austintown, *supra* at *356.* If a legislative enactment violates a fundamental right it is subject to strict judicial scrutiny and will be found to be unconstitutional unless it is shown to be necessary to promote a compelling state interest. *Sorrell* **v.** *Thevenir* **(1994), 69** Ohio St.3d **415,** 422, citing *Shapiro* **v.** *Thompson* **(1969), 394 U.S. 618;** see, also, *Bd. of Edn. v. Walter* **(1979),** *58* Ohio St.2d **368;** *State* **v.** *Cook* (1998), ___ Ohio St.3d ___.

**A. Right *to* a Jury Trial**

First, we address appellant's challenge to the statute wherein he contends the statute violates **his** right to a jury trial. Appellant asserts that he has the right to have a jury determine both **his** entitlement to punitive damages and to assess the amount of punitive damages levied upon the tortfeasor. We agree.

The right to trial by jury is a fundamental right. Section 5, Article I of the Ohio Constitution provides: "[t]he right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of **a** verdict by the

concurrence of not less than three-fourths of the jury." Inviolate means "*** free from substantial impairment." *Morris v. Savoy* (1991), 61 Ohio St.3d 684, 701, concurrence. The right to trial by jury extends to causes of action where the right existed at common law. *Sorrell, supra* at 421. The right to trial by jury includes the right to have the jury determine the factual issues and assess damages. *Morris, id.* Moreover, assessment of punitive damages stems from the common law and is encompassed within the right to trial by jury. *Zoppo v. Homestead Ins.* (1994), 71 Ohio St.3d 552, motion for rehearing, reconsideration denied (1995), 71 Ohio St.3d 1467 at 1467, certiorari denied (1995), 116 S.Ct. 56. Juries had an integral role in determining not only when punitive damages were justified but also of assessing what they determine is the proper amount. *Zoppo, supra* at 557.

**As** our supreme court stated in ***Zoppo:***

> "[i]n 1859, the common-law right to have juries award punitive damages was regarded as 'settled' in Ohio. *Roberts* **v.** *Mason* (1859), 10 Ohio St. 223, 225. In *Roberts,* this court emphasized the importance of the jury's role in determining punitive damages when it stated: 'Twelve intelligent and impartial men, acting under oath, and subject, in a proper case, to the control of the court, are not likely to do any great wrong; and it seems to us that the power which this rule confers upon a jury, may, in practice, operate as a salutary restraint upon the evil passions of bad men.'".

*Zoppo, supra* at **557.**

Our supreme court in *Zoppo* found that former R.C. 2315.21(C)(2) abrogated the common law right of the jury to assess the amount of punitive damages and as such was unconstitutional. *Zoppo, supra* at 557. We find the holding of *Zoppo* to be unambiguous and crystal clear. Our supreme court has found that a statute which impairs the traditional function of the jury in determining the appropriate amount of damages violates the right to a trial by jury as guaranteed under Section 5, Article I of the Ohio Constitution.

Although appellee urges us to distinguish the holding of *Zoppo* from the matter *sub judice*, it offers no cogent reasons for us to do so nor can we find any distinguishing differences. We find the analysis required in the matter *sub judice* to be indistinguishable from the analysis undertaken by the Supreme Court in *Zoppo*. Simply stated an injured plaintiff has the right to have the jury alone decide the amount of a punitive damage award. See *Zoppo, supra*.

We find the application of R.C. 2315.21(D)(3)(a) to be an even more egregious usurpation of the right to a trial by jury than the statutory section deemed unconstitutional by the *Zoppo* court. The former R.C. 2315.21 (C)(2), the statute at issue in *Zoppo*, while denying the jury the right to determine the amount of punitive damages at least provided for the court to determine the amount of punitive damages. Here, the statutory section complained of

precludes any determination of damages after the 'cap of $250 000 has been shown to have been reached. This statute prevents appellant, the victim of appellee's wrongdoing, from recovery of a properly proven $2,500,000 punitive damage award because this tortfeasor, at some other time, in some other state paid some other victim a punitive damage award of more than $250,000 for its bad behavior.

As a consequence, we find the application of the statutory provision here results in a total deprivation of appellant's constitutional right to a jury determination of the amount of punitive damages to be awarded. On the basis of our supreme court's holding in *Zoppo*, we find that where a judgment is entered in disregard of the jury's verdict, the appellant's right to have all facts, including damages, to be determined by the jury is violated. See, also, *Sorrell, supra*. The application of R.C. 2315.21(D)(3)(a) clearly infringes upon the jury's function to determine the amount of punitive damages to be awarded and substitutes the will of the General Assembly for that of the jury in any case where the jury imposes punitive damages against a defendant who has already paid at least the statutorily determined amount, thereby substantially impairing a plaintiff's right of trial by jury.

We hold that R.C. 2315.21(D)(3)(a) encroaches upon appellant's fundamental and inviolate right to trial by jury on his claim for punitive damages and is unconstitutional under Section 5, Article I of the Ohio Constitution.

**B. Due Process**

Section 16, Article I of the Ohio Constitution provides: "All courts shall be open, and every person for injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Appellee and *amicus curiae* for the Ohio Alliance for Civil Justice urge us to apply the "rational basis test" to determine whether R.C. 2315.21(D)(3)(a) is constitutional under the Due Process Clause. It is well established that where a state action infringes upon a fundamental right, said action becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is justified by a compelling state interest. *Bd. of Edn. v. Walter* (1979), 58 Ohio St.2d 368 (applying Equal Protection analysis). Further, the infringement of the action is required to be closely tailored to effectuate only those interests. *Id.* at 374.

Pursuant to our supreme court's decision in *Zoppo*, we recognize that the right to have the jury determine punitive

damages and assess the amount of those damages is encompassed within the right to have a trial by jury, a fundamental right. We find that the statute, because it effectively prevents a jury determination of the amount of punitive damages to be awarded to appellant, impinges upon that fundamental right. Where the statute impinges on a fundamental right our analysis of whether the statute is constitutional under the Due Process Clause requires our determination of whether this action is necessary to promote a compelling state interest. *Bd. Of Ed. V Walter, supra* at 373-374. The state assumes the heavy burden of proving the legislation is constitutional. *Id.* at 374.

The asserted governmental interest in enacting R.C. 2315.21 is set forth in the Tort Reform Act Section 5(B)(1)(a) which states in pertinent part that the amount of "punitive or exemplary damages awarded in a tort action are similar in nature to fines and additional court costs imposed in criminal actions, because punitive and exemplary damages, fines and additional court costs are designed to punish a tortfeasor for certain wrongful actions or omission." The Act further provides in Section 5(B)(1)(b) that "[t]he past failure to establish a statutory ceiling *** has resulted in excessive and occasionally multiple awards that have no rational legal connection to t wrongful actions *** in violation of the constitutional prohibition of cruel and unusual punishment"

and in (c) provides that "*** this distinction between large employers and other defendants is *** rationally based on size considering both. the economic capacity of an employer to maintain that number of employees and to impact the community at large ***."

In our view, R.C 2315.21(D)(3)(a) has not been shown to be necessary to promote the state interest as asserted nor has sufficient evidence been presented to convince us that such state interest is, in fact, compelling. Although the purpose of punitive damage awards is to punish the defendant, the totally arbitrary caps on the punitive damage awards, as mandated by the statute, bear no relation to the misconduct of the defendant. Without presenting any evidence to support its argument, appellee asserts that this statute, "preserves fairness in imposing punitive damages upon [it] and other defendants[,]" thereby "preventing [it] from being subjected to duplicative and unlimited multiple punitive damage awards for the same act, but providing punitive damage award sizable enough to deter and punish the tortfeasor." Without more, we find appellee's argument to be specious and the $250,000 cap to be at best arbitrary, capricious and unreasonable. Moreover, no evidence was presented to demonstrate that the statute is sufficiently narrowly tailored nor the least restrictive alternative necessary to effectuate the asserted goal of the legislation that it requires undermining a plaintiff's fundamental

and inviolate right to a jury trial. Consequently, we find that R.C. 2315.21(D)(3)(a) does not withstand the strict judicial scrutiny analysis required and the statute fails to accord Due Process to certain tort victims who are entitled to punitive damage awards. Consequently, we hold that R.C. 2315.21(D)(3)(a) violates the due process guarantees found in the Due Process Clause, Section 16, Article I of the Ohio Constitution.

**C. Equal Protection**

Section 2, Article I of the Ohio Constitution provides: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly."

As stated above, based upon our supreme court's holding in *Zoppo, supra,* we have determined that R.C. 2315.21(D)(3)(a) violates appellant's fundamental right to a jury trial. The standard for determining whether a statutory classification involving a fundamental right violates the Equal Protection Clause of the Ohio Constitution is the "strict scrutiny test." *Sorrell v. Thevenir, supra.* Therefore, the statutory classifications created by R.C. 2315.21(D)(3)(a) will be found to be unconstitutional

unless it can be shown that the classifications are necessary to promote a compelling governmental interest. *Beatty v. Akron City Hospital* (1981), 67 Ohio St.2d 483, 492

R.C. 2315.21(D)(3)(a) creates two classes of plaintiffs who are able to prove that a tortfeasor is liable to them for punitive damages: those who will be able to collect those punitive damages and those not. Application of this statute mandates that some injured victims may collect the punitive damage awards from tortfeasors as rendered by a jury verdict and some injured victims will be precluded from collecting the award. In our view, the ostensible purpose of the statute to limit excessive punishment of certain tortfeasors to prevent "cruel and unusual punishment" cannot withstand Equal Protection scrutiny under a strict judicial scrutiny analysis. We find that the evidence presented was insufficient to demonstrate that without punitive damage caps as mandated by the statute certain tortfeasors were subject to such excessive punishment as to be "cruel and unusual." We do not see that the stated interest is so "compelling" as to support the creation of two classes of injured tort victims

Further, a statutory classification violates the Equal Protection Clause if the classification treats similarly situated people differently based upon an illogical and arbitrary basis. We find the classes created by the statute to be both unreasonable and

arbitrary. We conclude that R.C. 2315.21(D)(3)(a) is, therefore, infirm on Equal Protection grounds even under the less stringent rational basis test

Accordingly, we hold that R.C. 2315.21(D)(3)(a) violates the equal protection guarantees as set forth in Section 2, Article I of the Ohio Constitution.

**D. Right to Remedy/Open Courts**

Section 16, Article I of the Ohio Constitution provides: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due courts of law, and shall have justice administered without denial or delay."

Section 16, Article I not only protects the right of a plaintiff to file a lawsuit, but also protects the right to a judgment or verdict properly rendered in a suit. *Morris v. Savoy, supra; Sorrell v. Thevenir, supra* at 426. Denial of a remedy and denial of a meaningful remedy lead to the same result: an injured plaintiff without legal recourse. *Gaines v. Preterm-Cleveland, Inc* (1978), [illegible] Ohio St [illegible]d 54, 60

In this case, application of R.C. 2315.21 (D)(3)(a) denies appellant the award of punitive damages as properly rendered by the jury after the jury's assessment of the evidence presented in his case against appellee. We find that where a jury verdict is

arbitrarily capped, the constitutional benefit of a jury trial, as we understand that right to be, is infringed and as such the statute violates appellant's right to an open court.

Accordingly, we hold that R.C. 2315.21 violates Section 16, Article I of the Ohio Constitution.

**E. Retroactive Application of the Statute**

Finally, we consider whether R.C. 2315.21 (D)(3)(a), if it were found to withstand constitutional scrutiny, may be applied retroactively. Section 28, Article II of the Ohio Constitution provides in pertinent part: "The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligations of contracts ***."

Although our determination that R.C. 2315.21(D)(3)(a) is unconstitutional effectively disposes of appellant's questions posed regarding the retroactive application of the statute, we also would find that despite the contentions of appellee and *amicus curiae*, R.C. 2315.21(D)(3)(a) cannot be construed to be remedial as it affects a substantive right.

The General Assembly recognized that the right to a trial by jury was abrogated by the former statutory provision R.C. 2315.21, wherein the trial court was required to determine the amount of awardable damages. House Bill 350, Section 5 (B)(2) states in pertinent part: "*** it is the intent of the General Assembly to

reflect the portion of the holding of the supreme court in *Zoppo v. Homestead Ins. Co., supra,* the statutory provisions requiring a trial court to determine the amount of awardable punitive or exemplary damages are unconstitutional and being violative of the right to a trial by jury established by Section 5 of Article I of the Ohio Constitution." Thus we see that the General Assembly recognized that the determination of the amount of punitive damages to be awarded is a jury function and the abridgement of that right violates the right to a jury trial.

A plain reading of R.C. 2315.21(G) indicates that the General Assembly intended R.C. 2315.21(D)(3)(a) to be applied retroactively. Therefore, the analysis of whether this statute is unconstitutionally retroactive in violation of Section 28, Article II of the Ohio Constitution requires an initial determination of whether that statute is substantive or merely remedial. *Van Fossen v. Babock & Wilcox Co.* (1988), 36 Ohio St.3d 100, paragraph 3 of the syllabus.

The right to a jury trial is a substantive right and not procedural. *Kneisley v. Lattimer-Stevens Co.* (1988), 40 Ohio St.3d 354, 356. Pursuant to our supreme court's pronouncement in *Van Fossen v. Babcock & Wilcox Co., supra* at 109, it is clear that retroactive application of a statutory section which affects appellant's substantive right by limiting his right to a jury trial

would violate Section 28, Article II of the Ohio Constitution. Consequently, we find that even if this statute were to pass constitutional muster, because it affects the substantive right of trial by jury, it may not be applied retroactively.

F. Conclusion

The legislature by enacting R.C. 2315.21(D)(3)(a) has in effect abrogated the common law right to have a jury assess the amount of punitive damages to be awarded to an injured plaintiff. Therefore, we hold that R.C. 2315.21(D)(3)(a) is unconstitutional because the statute impinges upon appellant's right to a trial by jury and violates his rights to Due Process, to Equal Protection, and to Remedy and Open Courts as guaranteed by the Ohio Constitution without a showing of sufficient evidence to demonstrate a compelling state interest justifying such

be

construed as constitutional, as it is a statute which affects a substantive right, it may not be applied retroactively.

We agree with the sentiment as expressed by Justice Sweeney in his concurring and dissenting opinion in *Morris, supra* at 717, "[u]nless and until we draw the line, this erosion of the right to trial by jury will continue, and as we have seen in the loss of ot r constitutional rights. Once the rights are lost, the recovery of those rights is difficult at best and often impossible."

Based upon the foregoing analysis, we conclude that it was prejudicial error for the trial court to grant appellee's motion for directed verdict on appellant's punitive damage claims pursuant to the mandate because we find R.C. 2315.21(D)(1)(a) to be unconstitutional.

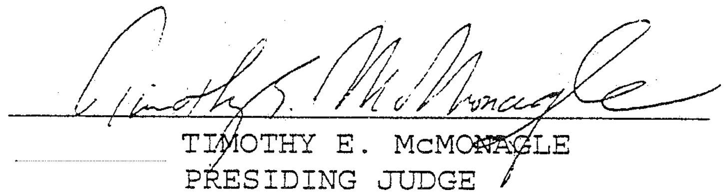
The judgment of the trial court wherein it granted the motion for directed verdict in favor of appellee on the award of punitive damages is reversed. The jury verdict of $2,500,000 as punitive damages in favor of appellant is reinstated.

This cause is reversed for further proceedings consistent with the opinion herein.

It is, therefore, considered that said appellant recover of said appellee his costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



TIMOTHY E. McMONAGLE
PRESIDING JUDGE

KENNETH A. ROCCO, J. and

MICHAEL J. CORRIGAN, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(D) and 26(A); Loc.App.R. 22(B), 22(D) and 26(A); Loc.App.R. 27. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. 11, Section 2(A)(1).

## VERDICTS AND SETTLEMENTS

Michael R. Brvk, Administrator of the
Estate of Michelle P. Caracci, Deceased
v. Comm Steel, Inc., et al.
Court and Judge: Cuyahoga County, Judge Robert Lawther
Settlement: September, 1998
Plaintiff's Counsel: MICHAEL A. SANSON
Defendant's Counsel: Walter R. Matchinga
Insurance Company: Heritage Insurance
Type of Action: Auto/Wrongful Death

Plaintiff's vehicle was struck as she entered an intersection by a truck operated by Defendant who maintained he had a green light and the right of way. There was no evidence of any conscious pain and suffering and Plaintiff died shortly after the collision.

Damages: Death
Plaintiff's Experts: Henry P. Lipian (Accident reconstruction expert); John F. Burke, Jr. (Economist)
Defendant's Experts: Dr.Bernard Lee Richards (Accident reconstruction expert)
Settlement: $400,000.00

Jane Doe v. ABC Corporation
Court and Judge: Lake County; Judge Martin O. Parks
Settlement: August, 1998
Plaintiff's Counsel: D. SCOTT KALISH and DONALD E. CARAVONA
Defendant's Counsel: Withheld
Insurance Company: Nationwide
Type of Action: Premises Liability/Negligent Security

Plaintiff was violently assaulted and robbed in Defendant's underground parking garage. The perpetrator gained access to the underground garage due to a broken garage door. Employees of Defendant Corporation had knowledge that the garage door was defective.

Damages: Short term memory loss; post traumatic stress disorder; post concussive syndrome; soft tissue injuries to the neck and back.
Plaintiff's Experts: Dr. Harold Mars; Dr.Michael Leach; Thomas Bader (Security expert)
Defendant's Experts: None
Settlement: $181,000.00

Massara Corporation v. Pennsylvania General Ins. Co.
Court and Judge: Cuyahoga County; Judge Carolyn Friedland
Settlement: January, 1998
Plaintiff's Counsel: BOB RUTTER
Defendant's Counsel: Clifford Masch
Insurance Company: Pennsylvania General Insurance Company
Type of Action: Insurance Coverage

Lightning claim that caused a power outage resulting in food spoilage at food market. The claim initially was denied due to power failure exclusion.

Damages: Not Listed
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: **$62,172.00**

Floyd & Shelly Metcalf v. Westfield National Ins. Co.
Court and Judge: Seneca County; Judge T.R. Spellerberg
Settlement: July, **1998**
**Plaintiff's** Counsel: **BOB** RUTTER
Defendant's Counsel: Robert Chudakoff
Insurance Company: Westfield National Insurance Company
Type of Action: Fire Insurance Claim

Arson was investigated, but insurer concluded it could not prove arson and honored the claim.

Damages: Not Listed
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $276,000.00

Sandra Davis v. Sandy & Beaver Valley Farmers Mutual
Court and Judge: Trumbull County
Settlement: January, 1998
Plaintiff's Counsel: BOB RUTTER
Defendant's Counsel: Harry Conn
Insurance Company: Sandy & Beaver Valley Farmers Mutual Insurance co.
Type of Action: Fire Insurance Claim

The claim was denied due to alleged misrepresentations on the insurance application. Handwriting analysis proved insured did not sign the application.

Damages: Not Listed
Plaintiff's Experts: Harold Rodin (Handwriting expert)
Defendant's Experts: Not Listed
Settlement: $199,750.00

Mussarat Nawaz dba Woodworth United Family Foods v. Nationwide Mutual Insurance Go.
Court and Judge: Mahoning County; Judge Maureen Cronin
Settlement: October, 1998
Plaintiff's Counsel: BOB RUTTER
Defendant's Counsel: Rich Sweebe
Insurance Company: Nationwide Mutual Insurance Co.
Type of Action: Fire Insurance Claim

Fire destroyed a family grocery store. The insurance company denied the claim alleging arson. After discovery was completed, case settled for policy limits.

Damages: Not Listed
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $181,000.00

Johnny Williams v. Kane Crane Pro Services
Court and Judge: Cuyahoga County; Judge Lillian Greene
Judgment: 9/98
Plaintiff's Counsel: JOSEPH C. DeROSA
Defendant's Counsel: Dale Markworth
Insurance Company: Zurich
Type of Action: Premises Liability

Defendant provided inadequate equipment to unload Plaintiff's truck. Plaintiff was injured when a crane collapsed and struck him. Defendant argued that unloading was not its responsibility and Plaintiff did not injure his back.

Damages: Herniation of L5-S1 with partial disc excision.
Plaintiff's Experts: Harvey Rosen, Economist; Alexander Michalow, M.D.
Defendant's Experts: John Davis, M.D.
Judgment: $700,000.00 less 15%

Susan Ellis v. David Miller, Jr., et al.
Court and Judge: Lorain County; Judge Lynett M. McGough
Plaintiff's Counsel: KENNETH J. KNABE
BROWN & SZALLER CO., L.P.A.
Defendant's Counsel: Jay Hanson/Richard Talbert
Insurance Company: Progressive and State Farm
Type of Action: Auto and UM

Plaintiff was a passenger in a car being driven by her husband. Plaintiff's car was struck when turning left by an oncoming driver. Plaintiff sued oncoming driver ($100,000.00 policy limits) and made an uninsured/underinsured motorist claim for negligence of husband. Settled against both Defendants for $150,000.00. Husband later found not at fault in his tort claim against oncoming driver.

Damages: Comminuted fracture - right femur
Plaintiff's Experts: Henry Lipian, Introtech (Accident reconstructionist); Dr. M. Patel (Orthopedic surgeon)
Defendant's Experts: Not Listed
Settlement: $150,000.00

Sandra Barcus v. Harrison Community Hospital, et al.
Court and Judge: Harrison County; Judge Ray Karto
Settlement: May, 1997
Plaintiff's Counsel: KENNETH J. KNABE
BROWN & SZALLER CO., LPA
Defendant's Counsel: R. Mark Jones
Insurance Company: P.I.E.
Type of Action: Medical Malpractice

Plaintiff presented to Harrison Community Hospital with a headache. The ER doctor diagnosed a headache, as did her subsequent treating physician. Plaintiff's headache was caused by an intra-cranial bleed which extended five days later causing visual loss. Plaintiff asserted visual loss would have been spared had Defendants properly diagnosed and treated her intra-cranial hemorrhage. Plaintiff also argued loss of chance.

Damages: Left homonymous hemianopsia (visual loss in the left half of both eyes)
Plaintiff's Experts: Dr. Colleen Victory (Board certified ER);
Dr. Hadley Morgenstern-Clarren (Internist);
Dr. Donald C. Austin (Neurosurgeon);
Dr. John F. Burke (Economist)
Defendant's Experts: Dr. Robert L. Tomsak (Neuro-Ophthalmologist);
Dr. Donald W. Junglas (Internist)
Settlement: $250,000.00

Jacquelyn Joyce Palmer v. State Farm
Court and Judge: Lorain County
Settlement: January, 1997
Plaintiff's Counsel: KENNETH J. KNABE
BROWN & SZALLER CO., L.P.A.
Defendant's Counsel: Myers, Henteman, Schneider & Rea
Insurance Company: State Farm
Type of Action: Bicycle/Auto (UM)

Plaintiff was bicycling down Lake Avenue when a passenger in an automobile grabbed her from behind, causing her to fall to the pavement. Hit and run uninsured motorist claim.

Damages: Plaintiff fell and injured her back and neck. Plaintiff improved, but then suffered a herniated disc 16 months after the fall; no surgery on disc.
Plaintiff's Experts: Dr. Vernon Patterson (Sports medicine);
Dr. Dakters (Neurologist)
Defendant's Experts: Not Listed
Settlement: $60,000.00

John Doe v. ABC Railway Co., et al.
Court and Judge: Cuyahoga County Common Pleas; Judge Anthony O. Calabrese, Jr.
Settlement: $1,900,000.00
Plaintiff's Counsel: DONALD E. CARAVONA
CARAVONA & CZACK, P.L.L.
Defendant's Counsel: Richard Gurbst
Insurance Company: Withheld
Type of Action: Personal Injury

During course and scope of employment with Defendant, ABC Railway, Plaintiff was injured when a locomotive jack was being moved and struck plaintiff in head.

Damages: Permanent injury to right leg; cognitive deficits; brain injury causing depression and behavioral changes; permanently unable to work.
Plaintiff's Experts: Mary M. Vargo (Physical medicine and rehabilitation); Barry S. Layton, Ph.D. (Neuropsychologist); Kathleen Long, Ph.D. (Psychologist); John Burke, Jr., Ph.D. (Economist); Teresa DeVito, M.D. (Speech, language pathologist); William Fallon, M.D. (Orthopedic surgery)
Defendant's Experts: Dr. John Conomy (Neurologist);
Dr. Dennis Brooks (Orthopedist);
Dr. Gordon Chelune (Neuropsychologist)
Settlement: $1,900,000.00

Rutkie v. ABC Country Club, et al.
Court and Judge: Cuyahoga; Judge McGinty
Settlement: May, 1998
Plaintiff's Counsel: STUART E. SCOTT
Defendant's Counsel: Gene Meador, Wayne Belock
Insurance Company: Travelers Insurance
Type of Action: Premise Liability/Negligence

Plaintiff was riding as a passenger in a golf cart. The Defendant driver lost control of the cart while descending a steep hill from the 18th tee. Plaintiff was ejected when the cart struck a tree. The Defendant golf course was aware of multiple previous accidents on the same hill.

Damages: Lateral tibial plateau fracture; torn medial collateral ligament
Plaintiff's Experts: Dr. Peter Brooks (Cleveland Clinic);
Ted White (Accident Reconstructionist)
Defendant's Experts: Richard Stanford (Reconstructionist)
Settlement: $132,000.00

Jane Doe v. ABC Hospital, John Doe - Surgeon, Ms. Doe - Emergency Surgeon
Court and Judge: Not Listed
Settlement: August, 1998
Plaintiff's Counsel: DONALD E. CARAVONA
CARAVONA & CZACK, P.L.L.
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Medical malpractice

Decedent presented to ABC Hospital emergency room complaining of severe abdominal pain at 11:17 p.m. She was not admitted until 3:20 a.m. to the nursing floor and her condition deteriorated until 4:20 a.m. when a surgeon was called in and emergency surgery was performed at 6:25 a.m. to investigate an acute abdomen. The surgery revealed a volvulus of the bowel and gangrene of most of the large and small intestines. Due to the extensive nature of the disease, the Plaintiff did not survive. The Plaintiff was a 16-year old female who had been diagnosed with anorexia bulimia and it was this condition that Plaintiff believes influenced the behavior of all Defendants.

Damages: Wrongful death
Plaintiff's Experts: Dr. Glenn Hamilton (ER physician);
Dr. David Heber (General and vascular surgeon)
Defendant's Experts: Dr. Richard Treat (Surgeon);
Dr. Dean Dobkin (ER physician);
Dr. Ronald Nichols (General surgeon)
Settlement: $800,000.00

Monica Dixon, etc., et al. v. University Hospitals
Court and Judge: Cuyahoga County; Judge Norman Fuerst
Judgment: November, 1998
Plaintiff's Counsel: ROMNEY B. CULLERS
Defendant's Counsel: Kevin Norchi
Insurance Company: Self-insured
Type of Action: Medical Malpractice

Improper management of shoulder dystocia at birth resulting in brachial plexus injury.

Damages: Permanent Erb's palsy
Plaintiff's Experts: Paul Gatewood, M.D. (Obstetrician)
Rod Durgin, Ph.D. (Vocational assessment)
Defendant's Experts: Mark Landon, M.D. (Perinatologist)
Judgment: $1,000,000.00

__Brunstetter v. Baji M.D. & St. Joseph Health Center__
Court and Judge: Trumbull County Common Pleas; Judge Stuard
Judgment: December 1998
**Plaintiff's** Counsel: KEITH E. SPERO, SCOTT A. SPERO
Defendant's Counsel: Charles Richards (for Hospital); John Jackson (for Dr. Baji)
Insurance Company: Medical Protective (Dr. Baji); Self-insured (Hospital)
Type of Action: Medical Malpractice and Hospital Negligence

On day of trial, Doctor defendant settled on a hi-lo agreement of $1.2 million/1.3 but Judge told that to jury, which knew from onset **that Plai**ntiff would have 1.2 million no matter what and another **$100,000**.00 -- if the verdict exceeds 1.2 against the Hospital. Plaintiff claimed Hospital was negligent because it did not require that the Doctor get special training before it permitted him to use its Laser which differed from the one he was trained on. The Hospital's Laser Nurse and Laser Safety Officer did not know that **the tip of** the laser fiber needed special conditioning to make it **cut instead** of coagulate.

**Damages:** Burned and coagulated head of penis during laser circumcision at age 13 months, causing physical injury (1/2 head of penis gone) and emotional injury.
Plaintiff's Experts: Dr. Jack Elder (Pediatric Urology); Dr. William Reiner (Pediatric Psychiatry) Dr. John Fisher (Laser Expert Sc.D.)
**Defendant's** Experts: Dr. Barry Stein (Urology laser Expert)
Judgment: $2,300,000.00

__Christine Cavazzo-Zajc v. James Naulty__
**Court and Judge:** Cuyahoga County; Judge Patricia Cleary
**Judgment:** September 1998
Plaintiff's Counsel: DANIEL M. SUCHER
SINDELL, YOUNG, GUIDUBALDI & SUCHER
Defendant's Counsel: James Johnson
Insurance Company: Allstate Insurance
Type of Action: Auto

Plaintiff was rear-ended by Defendant. Liability admitted. Defendant contested proximate cause and extent of damages. **Prejud**gment interest claim settled for $10,000.00.

Damages: Bulging L5-S1 disc
**Plaintiff**'s Experts: E. Byron Marsolais, M.D.; James Firstner, M.D.
Defendant's Experts: John Conomy, M.D.
Judgment: $86,000.00

Daniel Glover v. City of Cleveland
Court and Judge: Cuyahoga County; Judge Thomas P. Curran
Judgment: November, 1998
Plaintiff's Counsel: Daniel M. Sucher
SINDELL, YOUNG, GUIDUBALDI & SUCHER
Defendant's Counsel: Renee Bacchus, Paul Cristalo
Insurance Company: City of Cleveland -- self insured
Type of Action: Auto

Plaintiff motorcyclist was eastbound on Denison. Defendant's employee was westbound on Denison. Defendant's employee made a left turn at intersection of Ridge and Denison, claiming green turn arrow.

Damages: Facial scars
Plaintiff's Experts: Bashir Ulvi, M.D.
Defendant's Experts: None
Judgment: $128,500.00

Timothy Speith v. Maureen Previtt
Court and Judge: Cuyahoga County; Judge Patricia Cleary
Settlement: November, 1998
Plaintiff's Counsel: Jeffrey A. Leikin, Esq.
NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Roy Hulme
Insurance Company: Liberty Mutual
Type of Action: Auto

Plaintiff was struck by automobile while crossing street in a marked crosswalk. Defendant failed to yield right of way.

Damages: Fractured hip with post-traumatic arthritis, frozen shoulder, lower back injury.
Plaintiff's Experts: John Wilbur, M.D.; John Brems, M.D.
Defendant's Experts: None
Settlement: $400,000.00

Phyllis Stewart, Adm. v. Charles Myles
Court and Judge: Cuyahoga County; Judge J. Anthony Calabrese
Settlement: September, 1998
Plaintiff's Counsel: David M. Paris, Esq.
NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Stephen F. Dobscha
Insurance Company: Credit General Insurance Co.
Type of Action: Not Listed

Decedent was working as a flagman at a construction site on the Ohio Turnpike. At that time, he was pinned between a dump truck being backed up by Defendant and a shuttle buggy used to repave the highway. Defendant contended that Plaintiff negligently placed himself in between two moving pieces of equipment and failed to heed the back up alarm on Defendant's dump truck.

Damages: Crush injury to abdomen; mesenteric laceration; splenic laceration; right diaphragmatic rupture.
Plaintiff's Experts: Alan Cohen; Hadley Morgenstern-Claren, M.D.; John F. Burke, Jr., Ph.D.; Minnie Bowers, M.D.
Defendant's Experts: None
Settlement: $950,000.00

Carol Mohr, Admx. Estate of Paul Mohr v. Scott Charters, Inc.
Court and Judge: Pulasky County, Missouri; Judge Long
Settlement: November, 1998
Plaintiff's Counsel: Jamie R. Levotiz, Esq.
NURENBERG, PLEVIN, HELLER & McCARTHY
Defendant's Counsel: Confidential
Insurance Company: Great American
Type of Action: Aviation - Wrongful Death

Decedent was passenger on a Cessna T210 aircraft owned/operated by Scott Charters, Inc. which crashed while executing a missed approach to Vichy Airport, Rolla, Missouri.

Damages: Multiple blunt impact injuries to head and neck; immediate death; decedent survived by 58 year old wife.
Plaintiff's Experts: Charles Leonard, Pilot / Accident reconstruction; Dr. Stan Smith, Economist
Defendant's Experts: Not Listed
Settlement: $1,000,000.00 (policy limits)

John Doe v. Jane Doe
Court and Judge: Cuyahoga County
Plaintiff's Counsel: STUART E. SCOTT
Defendant's Counsel: Lynn Lazzaro
Insurance Company: State Farm
Type of Action: Auto Pedestrian

Plaintiff was struck by Defendant's automobile while crossing the street. Medical records showed Plaintiff was extremely intoxicated. Defendant was an off-duty police detective with the Cleveland Police Department. Defendant appeared intoxicated but refused all chemical tests. Defendant admitted to having three drinks that evening. Defendant claimed the light was green for her lane of travel. Defendant also claimed Plaintiff was outside the crosswalk. Plaintiff had no memory of the events surrounding the collision.

Damages: Bilateral tibia/fibula fractures, multiple rib fractures; dislocated shoulder, scalp wound.
Plaintiff's Experts: Brendan Patterson, M.D.
Defendant's Experts: Henry Lipian (Reconstructionist)
Settlement: $130,000.00

Seymour I. Zimberg v. Joseph R. Braverman, et al.
Court and Judge: Not Listed
Settlement: May, 1998
Plaintiff's Counsel: RUBIN GUTTMAN
Defendant's Counsel: Withheld
Insurance Company: Westfield Companies
Type of Action: Sidewalk Trip and Fall

Plaintiff was a pedestrian to whom the area was not well known. Sidewalk was uneven and slabs were at various angles.

Damages: Right arm fracture
Plaintiff's Experts: Not Listed
Defendant's Experts: Not Listed
Settlement: $38,000.00

Sigley v. Kuhn
Court and Judge: United States District Court, Northern District of Ohio; Akron; Judge Gwin
Judgment: July, 1998
Plaintiff's Counsel: PETER J. BRODHEAD, MARY A. CAVANAUGH
Defendant's Counsel: Allen Adler (Ohio Atty. Gen.'s Office)
Insurance Company: Withheld
Type of Action: §1983 Civil Rights Action for Use of Excessive Force

In process of DUI stop, state trooper shot Plaintiff twice in the back.

Damages: Bullet wounds to posterior shoulder and scapula with 9mm bullet permanently lodged near aortic wall; post-traumatic stress disorder
Plaintiff's Experts: Dr. Gil Brogdon (Forensic Radiologist); Dr. Martin Fackler (Wound Ballistics Expert); W. Ken Katsaris (Law Enforcement Standards)
Defendant's Experts: J.D. Miller (Law Enforcement Training and Standards); Samuel Faulkner (Law Enforcement Training and Standards)
Judgment: $140,000.00

Patrick Davis v. Harry Stiggers, D.O.
Court and Judge: Cuyahoga County; Judge Aurelius
Settlement: July, 1998
Plaintiff's Counsel: JOHN A. LANCIONE, LANCIONE & SIMON, P.L.L.
Defendant's Counsel: Marc Groedel, Joseph Tira
Insurance Company: Med Pro and PICO
Type of Action: Medical Malpractice Wrongful Death

Defendant failed to perform any breast cancer screening on decedent despite the fact she had a family history of breast cancer. Decedent discovered a lump that was ultimately diagnosed as cancer. She died of metastatic disease.

Damages: Death of 58-year-old widowed mother of 10 adult children.
Plaintiff's Experts: Hadley Morgenstern-Clarren, M.D.
Defendant's Experts: None
Settlement: $500,000.00

Jane Doe v. XYZ Hospital
Court and Judge: Cuyahoga County
Settlement: March, 1998
Plaintiff's Counsel: DENNIS R. LANSDOWNE, STUART E. SCOTT
SPANGENBERG, SHIBLEY & LIBER
Defendant's Counsel: Withheld
Insurance Company: Defendant Hospital self-insured
Type of Action: Medical Malpractice

Plaintiff presented to the emergency room complaining of a cough, fatigue, shortness of breath, and heart palpitations over the previous several days. Plaintiff had no previous significant medical history. Tests in the ER revealed Plaintiff's heart was in atrial fibrillation. Plaintiff was admitted and placed on the heart monitoring floor. She was treated with beta blockers and channel blockers for atrial fibrillation. A well-known side effect of these medications is a condition called heart block which Plaintiff experienced. If not properly treated, heart block can progress from Stage I to Stage III (total block), and ultimately lead to cardiac arrest. There is an established protocol for treating heart block which includes the administration of drugs and, if no response, placing a pacemaker on the patient.

Damages: Cardiac arrest resulting in permanent, semi-vegetative state.
Plaintiff's Experts: Charles J. Love, M.D. (Cardiology Expert); Gary M. Yarkony, M.D. (Life Care Plan Expert); Robert Kirkpatrick, M.D. (Liver Disease Expert); Denise Hayes, R.N. (Nursing Expert); John F. Burke, Jr., Ph.D. (Economic Expert).
Defendant's Experts: Richard J. Candela, M.D. (Cardiology Expert); Ronald E. Cranford, M.D. (Neurology Expert).
Settlement: $4,500,000.00

Sandra Barcus v. Harrison Community Hosp., et al.
Court and Judge: Harrison County; Judge Ray Karto
Case No. 95-127-CVC
Settlement: **May, 1997**
Plaintiff's Counsel: KENNETH J. KNABE, BROWN & SZALLER CO., LPA
Defendant's Counsel: R. Mark Jones
Insurance Company: P.I.E.
Type of Action: Medical Malpractice

Plaintiff presented to Harrison Community Hospital with the worst headache of her life. The ER doctor diagnosed a headache, as did her subsequent treating physician. Plaintiff's headache was caused by an intra-cranial bleed which extended five days later causing visual loss. Plaintiff asserted visual loss would have been spared had Defendants properly diagnosed and treated her intra-cranial hemorrhage. Plaintiff also argued loss of chance.

Damages: Left Homonymous Hemianopsia (visual loss in the left half of both eyes)
Plaintiff's Experts: Dr. Colleen Victory (Board Certified ER); Dr. Hadley Morgenstern-Clarren (Internist); Dr. Donald C. Austin (Neurosurgeon); Dr. John F. Burke (Economist)
Defendant's Experts: Dr. Robert L. Tomsak (Neuro-Ophthalmologist); Dr. Donald C. Junglas (Internist)
Settlement: $250,000.00

Susan Ellis v. David Miller, Jr., et al.
Court and Judge: Lorain County; Judge Lynett M. McGough
Case No. 95 CV 113968
Plaintiff's Counsel: KENNETH J. KNABE, BROWN & SZALLER CO., LPA
Defendant's Counsel: Jay Hanson, Richard Talbert
Insurance Company: Progressive and State Farm
Type of Action: Auto and UM

Plaintiff was a passenger in a car being driven by her husband. Plaintiff's car was struck when turning left by an oncoming driver. Plaintiff sued oncoming driver ($100,000.00 policy limits) and made an uninsured/underinsured motorist claim for negligence of husband. Settled against both Defendants for $150,000.00. Husband later found not at fault in his tort claim against oncoming driver.

Damages: Comminuted fracture - right femur
Plaintiff's Experts: Henry Lipian, Introtech (Accident Reconstructionist); Dr. M. Patel (Orthopedic Surgeon)
Defendant's Experts: David Urich (Accident Reconstructionist)
Settlement: $150,000.00

Louise Manfredi, Guardian of Christina Marshall v. Warren General Hospital, et al.
Court and Judge: John Stuard; Trumbull County Common Pleas Court
Settlement: September, 1998
Plaintiff's Counsel: DONALD CYBULSKI, RAYMOND TISONE
Defendant's Counsel: David Comstock, Daniel Keating
Insurance Company: Defendant Obstetrician: Frontier Insurance
Hospital: Self-insured
Type of Action: Medical Malpractice

Mother in 40th week of pregnancy arrived at hospital believing she was in labor. Defendant obstetrician failed to recognize signs of fetal distress as shown on electronic fetal monitor and discharged mother. She returned the following day for emergency caesarean section, but brain damage had already resulted in infant.

Damages: Cerebral palsy resulting in ability to walk of child now 3 1/2 years old.
Plaintiff's Experts: Paul Gatewood (Obstetrician); Patricia Ellison (Pediatric Neurologist); Robert Zimmerman (Pediatric Neuroradiologist); Patricia Fedorka (Obstetrical Nursing); Joseph Valko (Life Care Planning); Harvey Rosen (Economist)
Defendant's Experts: Patrick Barnes (Pediatric Neuroradiologist); Michael Painter (Pediatric Neurologist); William Johnston (Pediatric Neurologist)
Settlement: $1,650,000.00

Estate of John Doe v. Common Carrier
Court and Judge: Cuyahoga County Common Pleas; Judge Daniel Gaul
Settlement: December, 1998
Plaintiff's Counsel: DAVID J. GUIDUBALDI
Defendant's Counsel: Withheld
Insurance Company: Self-insured
Type of Action: Automobile

Vehicle made an improper left turn, cutting across intersecting lane of traffic, and hit bicyclist stopped at traffic light.

Damages: Crushing head injury resulting in immediate death
Plaintiff's Experts: Stanley Seligman, M.D. (Coroner); John Burke, Ph.D. (Economist); Henry Lipian (Accident Reconstructionist)
Defendant's Experts: Not Listed
Settlement: $1,500,000.00

Truett, etc., et al. v. LTV Steel, et al.
Court and Judge: Cuyahoga County Common Pleas; Judge Saffold
Settlement: November, 1998
**Plaintiff's** Counsel: ROBERT F. LINTON, JR., LINTON & HIRSHMAN
LARRY S. KLEIN, KLEIN & CARNEY CO., LPA;
Defendant's Counsel: James F. Sweeney
Insurance Company: Self-insured
Type of Action: Intentional Tort

52 year old decedent crushed by steel coil which slid off carrier during production. Case was filed under the new intentional tort statute, and settled while a Motion for Summary Judgment was pending. Plaintiff opposed on constitutional grounds.

Damages: Death due to crushing by steel coil
Plaintiff's Experts: Simon Tamny, P.E.; John F. Burke, Jr., Ph.D. (Economist); Howard Jerome Tucker, M.D. (Conscious Pain and Suffering)
Defendant's Experts: Not Listed
Settlement: $800,000.00

McCune v. Motorists
Court and Judge: Summit County; Judge Murphy
Judgment: July 9, 1998
**Plaintiff's** Counsel: MARK W. RUF
Defendant's Counsel: Kurt Weitendorf
Insurance Company: Motorists
Type of Action: Underinsured Motorists for Coverage Over $25,000

The tortfeasor paid $25,000. Plaintiff had UIM coverage of $50,000. Plaintiff sought the policy limits.

Damages: Herniated disc at C5-6
Plaintiff's Experts: Rod Durgin, Ph.D.; Michael Pryce, M.D.
Defendant's Experts: P.L. Soni, M.D.
Judgment: $150,000.00

Parisi v. Ford Motor Company, and Fred Godard Ford
Court and Judge: Summit County; Judge Kennedy
Judgment: August 11, 1998
Plaintiff's Counsel: DEAN YOUNG, LAURA McDOWALL
Defendant's Counsel: David Tryon, Tracy Turnbull (Ford Motor)
Fred Corns, Matthew Oby (Fred G. Ford)
Insurance Company: Self-insured
Type of Action: Lemon law

Plaintiff purchased a 3-year old used Taurus from Fred Godard Ford for $10,000. She was told by the salesman that the car was a Ford fleet vehicle driven by a Ford executive; that the car had been maintained by Ford and was in pristine condition; and that there had been no mechanical problems with the vehicle. Plaintiff signed the purchase contract and other documents without reading them, relying on the dealership employee's explanation of the documents. The last paper presented to Plaintiff was a disclosure form, for which Plaintiff was told that "this paper just says that the car has a new transmission." After assurances that this was actually better since the new transmission had no miles on it, Plaintiff signed the form. Approximately a year after purchase, after Plaintiff had experienced repeated problems with the car, Plaintiff learned that the car had been owned by a woman in New Jersey who had filed a lemon law complaint against Ford due to repeated mechanical problems with the transmission and brakes.

Damages: Purchase price of car; damages for aggravation, inconvenience, frustration, and other incidental damages.
Plaintiff's Experts: David Stivers (Auto Industry Consultant)
Defendant's Experts: Jeff Strongin (Mgr. of Reacquired Vehicle Dept)
Judgment: $314,000 plus attorney fees

Marina Lee Gliner, et al. v. Saint-Gobain\Norton Industrial Ceramics Corporation (Bicron)
Court and Judge: Cuyahoga County Common Pleas; Judge Feighan
Judgment: October 22, 1997
Plaintiff's Counsel: STEVEN A. SINDELL, ANDREW S. GOLDWASSER
Defendant's Counsel: Dianne Hearey, Wally Mueller
Insurance Company: None
Type of Action: Sex Discrimination in Employment

Plaintiffs were 4 female employees who were terminated as part of a claimed reduction-in-force on August 15, 1995. They were paid less than their male counterparts. Plaintiffs were denied advancement and training opportunities accorded to similarly situated male employees. Statistical evidence indicated that the reduction-in-force was not gender neutral. In fact, less experienced and/or qualified male employees were retained while Plaintiffs, their female counterparts, were terminated. There was proof of gender-biased stereotypical attitudes related to the adverse actions taken against Plaintiffs on the part of male upper-management decisionmakers.

Damages: Lost wages; general compensatory non-economic damages: disparate pay and discriminatory termination
Plaintiff's Experts: Dr. Harvey Rosen (Economist/Statistics); Dr. Robert Battisti (Plaintiff Gliner only)
Defendant's Experts: Not Listed
Judgment: $1,135,000.00

Minor v. ABC Insurance
Court and Judge: Cuyahoga County Common Pleas
Settlement: November, 1998
Plaintiff's Counsel: ROBERT F. LINTON, JR., LINTON & HIRSHMAN
LARRY S. KLEIN, CHRISTOPHER CARNEY
KLEIN & CARNEY CO., LPA
Defendant's Counsel: David Hilkert
Insurance Company: Withheld
Type of Action: Insurance Coverage

This was an insurance coverage case in which a three month old infant was injured while in a rental car. Defendant contended that UIM coverage on a primary and excess policy was rejected by the insured rental agency and further that the infant was not an insured under those policies. Case settled the day before trial with cross motions for summary judgment pending.

Damages: Head injury with left sided hemiparesis in three month old infant
Plaintiff's Experts: Alan Cohen, M.D., FACS; Joseph R. Spoonster, M.S., V.E. (Vocational Analyst)
Defendant's Experts: Not Listed
Settlement: $600,000.00

Polivka, etc., et al. v. American & Steel Wire, et al.
Court and Judge: Cuyahoga County Common Pleas; Judge McMonagle
Settlement: December, **1998**
Plaintiff's Counsel: ROBERT F. LINTON, JR., LINTON & HIRSHMAN
Defendant's Counsel: Timothy G. Kasparek, Mark F. Kruse, John V. Rasmussen
Insurance Company: St. Paul Insurance Company (for American Steel); Liberty Mutual (for C&K)
Type of Action: Employment Accident

29 year old single male electrocuted when he struck a power line to overhead electric crane.

Damages: Death by electrocution
Plaintiff's Experts: Samuel J. Sero P.E. (Liability); Ronald K. Wright, M.D., J.D. (Forensic Pathologist); John F. Burke, Jr., Ph.D. (Economist)
Defendant's Experts: D. E. Ruff (Electrical Engineer); Earl Gregory (Industrial Hygienist and Workplace Safety Expert)(for American Steel); Jack Bene (Electrical Engineer) (for C&K)
Settlement: **$1,250,000.00**

Maureen Balut, Dec'd v. John Doe Nursing Center, et al.
Court and Judge: Trumbull County Common Pleas
Settlement: May, **1998**
Plaintiff's Counsel: PETER J. BRODHEAD, JUSTIN F. MADDEN SPANGENBERG, SHIBLEY & LIBER LLP
Defendant's Counsel: Withheld
Insurance Company: Medical Protective Company; St. Paul Insurance Company
Type of Action: Nursing Home Negligence

Maureen Balut was a resident at Defendant's nursing home where she received neglectful care both by the nursing home and the physicians who visited her there monthly. She was ultimately found in a comatose state and transferred to a local hospital where she expired several weeks later.

Damages: Severe dehydration, malnourishment, infection, and bed sores
Plaintiff's Experts: Hadley Morgenstern-Clarren, M.D.
Defendant's Experts: Carl A. Culley, Jr., M.D.; John B. Krupko, M.D.
Settlement: $500,000.00

Jane Doe, et al. v. John Doe Hospital
Court and Judge: Cuyahoga County; Judge Burt W. Griffin
Settlement: October, 1998
Plaintiff's Counsel: THOMAS MESTER
Defendant's Counsel: Withheld
Insurance Company: Withheld
Type of Action: Medical Malpractice

The Plaintiff suffered "an iatrogenic complication from a radiologic test". During an attempted enterelcosis a balloon was inadvertently blown up into the duodenum resulting in a perforation, septic condition, and other complications suffered by the patient. Additionally, subsequent to her discharge, she was **treated** for approximately three months by a home nursing program, is further suffering post traumatic stress emotional disorder, and has an unsightly abdominal scar, polyneuropathy of her hands and fingers, and was treated for diabetes during her admission.

Damages: Post traumatic stress emotional disorder, unsightly abdominal scar, polyneuropathy of her hands and fingers, and was treated for diabetes during her admission.
Plaintiff's Experts: Myron Marx, M.D. (Radiologist); Aaron H. Chevinsky, M.D. (Surgeon)
Defendant's Experts: Not Listed
Settlement: $500,000.00 plus Defendant's assumption of all subrogated medical bills

# H.B. 350 Case Report

The people of Ohio cannot afford to lose the fight against H.B. 350 in Ohio Courts. The advocates for tort reform have developed a database of H.B. 350 decisions which is available only to the defense bar. We need your help to make the same information available to injured consumers. This information will be available at the OATL's Internet home at www.oatlaw.org.

I have **court decision** ☐ and/or **brief** ☐ involving the following H.B. 350 issues (**circle the issues which apply**):

| | | |
|---|---|---|
| Damage Caps<br><br>Products Liability<br>▸ Statute of Repose<br>▸ Recall Notification<br><br>Political Subdivision Liability<br><br>Post/Pre-Judgment Interest<br><br>Collateral Benefits | Joint and Several Liability<br><br>Comparative Negligence<br>▸ Seatbelt Non-Use<br>▸ Alcohol/Drug Use by Plaintiff<br><br>Medical Malpractice<br>▸ Certificate of Merit<br>▸ Statute of Repose<br>▸ Negligent Credentialing<br><br>Taxability of Jury's Award | Wrongful Death<br>▸ Barred by payment of decedent's injury claim<br>▸ Caps<br><br>Punitive Damages<br>▸ Damage Cap<br>▸ Bifurcation<br><br>Volunteer Coaches and Officials Immunity<br><br>Other:______________ |

Case Name:______________________________ Case #______________

Court:________________________________ Judge:______________

Please take a moment to supply us with a brief synopsis of the legal issues in this case:________________________________________

____________________________________________________

____________________________________________________

______________________________________________

I have attached (or emailed) at copy of: Court Decision ☐, Plaintiff's Brief ☐ and/or Defense Brief.

Contact Information

Name: ______________________________

Address: ______________________________

City: ______________ State:_____ Zip: ____________

Phone: ______________ E-mail:______________

Please return this form to: OATL, Attn: Holly Skinner, 395 East Broad Street, Suite 200, Columbus, OH 43215-3814, Fax: 614-341-6810, e-mail: hollys@oatlaw.org.