CATA News
Cleveland Academy of Trial Attorneys

January/February, 2000

Edited by
Paul V. Wolf
and
Romney B. Cullers

Cleveland Academy
of Trial Attorneys
Hoyt Block, Suite 300
700 West St. Clair Avenue
Cleveland, Ohio 44113
216-771-5800
216-771-5803 FAX

President's Message

So how do we look? It's only fitting that as we enter the new millennium, we also update our image. But we want to do more than just look better. We want to deliver news you can use. Inside you'll find a nice op ed piece by James Lowe, our former president, who reflects back over more than twenty-five years of practice. In "The Times They Aren't A-Changin"', James points out that despite the hype to the contrary, the challenges facing our profession today are no greater than they were a few decades ago. Despite these hurdles, we have not only survived, but thrived.

In Chambers

You will also note a new feature entitled "In Chambers" which has been prepared by Stephen J. Keefe, Jr. Steve has recently joined our firm as a new associate, after serving as a Judicial Staff Attorney for Judge Sutula and Judge Russo. Steve is interviewing many of our local trial judges to learn what we could do to better improve our craft. He starts off this month with a summary from his former mentor, Judge Sutula, and from Judge Burnside, who is always quick to volunteer her time to help us become better lawyers. If any of you judges would like to share your perspective, please give Steve a call at (216) 771-5800.

Depositions

Also inside, John Meros gives us a good refresher course on the essentials of preparing our clients for deposition. In reviewing John's article, I'm reminded of what may be the second best article on deposition preparation I've ever read. It was featured in the Summer, 1998 edition of *Litigation* by David M. Malone, entitled "'Talking Green, Showing Red – Why most Deposition Preparation Fails and What to do About It." I'm happy to provide a copy of that article to anyone interested, but it revolutionized my thinking on how to prepare a witness for deposition. It suggests that the rules we all play by may all be wrong. Malone suggests that the only thing a client needs to be told is that she has one job at the deposition – to tell the truth and to keep her answers short. Our job is to worry about anything else that might come up.

Malone also suggests sitting right beside the witness while preparing her, just like you would at deposition. He also reminds us that nowhere is it written that the witness must sit right beside the court reporter. Instead, he likes to sit between the witness and the court reporter. But can you do that? Where is it written that you can't? If defense counsel begins to object, the short answer is simply "thank you for the offer of changing seats, but I'm sure the court reporter won't have any problem hearing the witness as she speaks. If she does, she'll let ine know, and we'll work something out. Counsel, you may go ahead and proceed."

Remind the witness, too, that she need not bring any documents to the deposition. Any documents to be turned over should be provided to you for review well before the deposition -- so that's one less thing the witness has to worry about.

Malone also outlines the only seven answers the witness must memorize before her deposition:

1) Yes;
2) No:
3) Green;
4) I don't know;
5) I don't remember;
6) I don't understand the question; and
7) I need a break.

Yes and no are simple. If the question can be answered yes or no, simply say so. If the lawyer wants to know more, he'll ask you for it. Green – this is a reminder that if the question calls for the color of your car, that's the simple answer, and you need not go beyond that. Remind the client that going beyond the question asked is like traveling down the branches of the Nile. It opens up only more lines of questioning. The "I don't know," "I don't remember," and "I don't understand the question" are clear enough. Regarding breaks, let the client know that she can take a break at any time under one condition – that if you decide a break is needed, the client must immediately stop the deposition and follow your advice. This gives you an opportunity to take a break whenever you see the witnesses tiring, and hopefully before she sinks the case, which usually occurs just before lunch on an empty stomach.

Malone also reminds us that effective deposition preparation is not about hiding facts. We must remember that we're not responsible for bad facts -- only for finding a way to explain them or making them fit our theory of the case. We can only make sure that the testimony is delivered in a coherent, articulate way, in a courteous manner and in a reasonable amount of time. Be sure and remind the witness, too, about the need for objections. Tell her most are for the judge to rule on later, unless an unfair question is asked in which case, you'll object and tell her not to answer.

In that same issue of *Litigation*, Janeen Kerper, a trial advocacy instructor from California Western School of Law, likes to explain to witnesses about not volunteering like this: tell clients that depositions are like the childhood game, Go Fish. The other side wants to take your cards. If they say, "do you have any tens," the truthful answer is no. The last thing on earth you want to say is "no, but I've got some sixes and jacks if you like." We don't want to show your full hand until we get to trial. She also points out that it's important to ask your client right up front what she knows about depositions and to tell you about any concerns she has. Then paraphrase it back to the client so that she knows that she's being heard and understood. It may well be that the client is simply worried about money running out of the parking meter, whether the babysitter will stay late, or whether the other side's lawyer is better than you. Whatever her fears are, there will be plenty of thein as she prepares for deposition. Simply ignoring them, or telling thein that she has nothing to be afraid of, will not eliminate the fear. Just the opposite

is needed. I like to remind iny clients that everybody is nervous before depositions, including the lawyers, and that this is natural. The fear will keep your adrenalin level high, and make you sharp for the questions that will be asked.

Remember, too, about Evidence Rule 612. Some courts have held that documents shown to a witness to refresh his recollection may be discoverable, even if otherwise privileged. Finally, remember that a witness ma): make even substantive changes in his testimony in the errata sheet, provided he states his basis for doing so. While the witness can then be cross examined on his original answers, it's still better to make those changes shortly after the deposition rather than on the witness stand at trial.

Opening statements - and order of proof.

What is inore effective, creating empathy and sympathy for your client, or attacking the defendant? *Lawyers Weekly USA* reported recently that plaintiffs should always start by attacking the defendant. The article is based on research developed by David Werner, a former psychotherapist, who is now a practicing trial lawyer and the developer of ATLA's Overcoming Jury Bias Program. There are several reasons for this phenomenon. First, people naturally focus on the person whose conduct is set forth first. If it's the plaintiff, then they will look for ways to blame the plaintiff. In addition, when people are faced with a scary situation, like a catastrophically injured person, they do whatever they can to disassociate from the person. They try to think of ways why that would never happen to them, and subconsciously blame the plaintiff. There's also a strong bias today that people don't want to take personal responsibility for their actions.

To overcome this bias, Werner says you have to focus first on the defendant and how his callous indifference created the situation which lead to the harm Keep in mind, too, that once a juror develops a story about what happened, he will adjust the evidence to support his version of the story rather than saying, oh, that evidence doesn't fit, so now I have to change my story The story line will give him the filter through which he sees the evidence, embracing what supports his theory and rejecting what opposes it.

According to Werner, sympathy tends to be the lowest motivator. In one case, a 14 year old boy who suffered severe brain injury was left mentally and physically impaired as the result of a failure to diagnose a brain tumor. The Plaintiffs lawyer wanted to start off by showing a graphic 14 minute Day in the Life Film, which he hoped to be a real tearjerker. However, once he showed it to the jury, they just sat there stone-faced. Fortunately, the defense counsel moved for a mistrial so plaintiffs counsel had a second chance to try the case. This time, he put the defendant doctor on first, followed by the plaintiffs expert to testify about what the doctor did wrong. Only then did he bring the boy into the courtroom for a quick cameo appearance, and didn't even use the Day in the Life Film. The jury returned a verdict of *$6* million dollars.

In another case, a worker had lost his arm while doing maintenance on a hay bailer with the motor running, despite warnings on the machine to the contrary. The plaintiffs lawyer wanted to put the plaintiff on first, but the jury consultants talked him out of it. He put the corporate representative on first instead. From the start, the plaintiffs lawyer then focused on what the defendant could have done differently with better designs and better warnings. He also emphasized the numerous other accidents that had happened, and the defendant's failure to take any steps to remedy the known danger. The highest award previously in hay bailer cases of this kind was $1.5 million. This one resulted in a $10.2 million dollar verdict. According to Werner, even in cases where the plaintiff is legally blame-free, focus groups have shown that when the focus is on the plaintiff first, the jurors still looked at what the plaintiff did or failed to do to cause the injury, Instead, the focus should be on the defendant's conduct, which usually starts long before the accident happened.

Medical malpractice -- it's more frequent than you think.

The National Academy of Sciences Institute of Medicine, you may have heard, has recently concluded

a study researching the number of medical inistakes that cause serious injury or death, The report concluded that medical errors kill 44,000 to 98,000 people a year. This exceeds the number of people who die annually from highway accidents (about 43,450), breast cancer (42,300) or AIDS (16,500). These medical mistakes result in $8.8 billion dollars a year in health care costs that could be attributed to preventable medical injuries the panel concluded.

Another Favorable Subrogation Case

The 12th District Court of Appeals has held that an ERISA Employee Benefit Plan's right of reimbursement for medical payments made had to be reduced by a proportionate share of the attorney's fees and court costs the plaintiffs had to pay to obtain recovery from the tortfeasor. See Bradburn. et al v. Merman (11th District Court of Appeals, October 25, 1999) Case No. CA99-OT-011, unreported, The court further found that the issue is governed by state law, not ERISA, and the Coininon Pleas Court had concurring jurisdiction with the federal courts to decide the claim.

New Members

Please join in welcoming our new members to the Cleveland Academy of Trial Attorneys: Michael M. Courtney, Brenda M. Johnson, Harry J. Jacob III, Dean Nieding, James L. Deese, Richard G. Johnson, David A. Beal, Murray D. Bilfield, William T. Zaffiro, Frederick J. Kreiner, John R. Irwin, John J. Wargo, Jr., Robin J. Peterson, Bradford D. Zelasko, John W. Martin, Thomas Mester. Laurel A. Matthews, M.D., Daniel M. Katz, Madeleine L. Lecso, Melanie V. Miguel, Kemper David Arnold; Jonathan D. Mester, Blake A. Dickson, Nicholas E. Phillips, William N. Masters, and Grant A. Goodman.

Expert Deposition Bank

Ann Garson with the help of Lisa Mack, a former legal secretary, who is now a stay-at-home Mom, have finally concluded the review and summary of the thousands of depositions contained in our Expert Bank The database index will soon be available to members by e-mail and hard copy Details will follow in our next Newsletter. This has been a daunting task the CATA has been pursuing throughout the past decade, and one that Lisa and Ann deserve a round of applause in finally completing.

Finally, on behalf of the Academy, we extend our condolences once again to Rose Graf, Dave Paris' secretary, who recently lost her husband. Rose has served for years as the gatekeeper of our Expert Bank, and we extend to her our deepest sympathies for her loss.

Remember, in the race for justice, there is no finish line.

Robert F. Linton, Jr.
President

The Times Aren't A-Changin'

by James A. Loive
Loive Eklund Wakefield Co., L.P.A.

Once you reach 50 (or so), and you've put in 25 years (or so) into this profession, you get (or take) the right to put current events and trends into perspective. So here's some perspective

The beloved Cleveland Browns are back, but they're losing ugly (remember the 4 1-9 drubbing by the lower-than-whale-bellies Ravens?). The civil justice system has an aura to most folks akin to bank robbery. Altogether too many judges seem impatient with us and our cases, as if we were interrupting an otherwise lovely day. Many have never prepared a civil case for trial. A few judges don't even seem to like lawyers at all. There's tremendous competition for good cases, challenging all of us to make sure we act appropriately and honorably.

About twenty-five years ago, the Browns were hopeless losers. To add insult to injury, it was the era of the Steelers. Our most-hated rival was winning Super Bowls; we couldn't even beat Cincinnati.

The legislative scene for personal injury lawyers was grotesque. A passenger couldn't even sue the negligent driver who'd caused his injuries unless he'd paid some consideration for the ride. Damages in wrongful death cases were limited to pecuniary loss. The death of a child was mocked as having no value at all. Tragedies of immense proportion resulted is Settlements of less than $50,000. Sovereign immunity was still all the rage; it makes today's Court of Claims almost look like a reasonable tribunal.

All personal injury lawyers were dubbed "ambulance chasers". Lawyers who did not join "silk stocking" firms were largely regarded as having been unable to do so. It was not uncommon to find an attorney in a large firm express disrespect for a sole practitioner or a lawyer in a small firm. There was often a concomitant effort to squash the upstart through the use of overwhelming resources,

Conventional wisdom was that good liability negligencecases were worth three to five times the "specials", frequently ignoring the real substance of the injuries.

As today, some judges were great. They enjoyed the lawyers who appeared before them, worked hard to achieve settlements where possible, and tried cases without trying to punish one side or the other. Some judges, however, regarded civil cases as matters to be delegated to bailiffs or as unwelcome conflicts with more enjoyable options.

Through tumultuous efforts at tort "reform", pushing past endless waves of criminal cases which choke the system, enduring in the face of widespread contempt for the entire profession, here we stand, still strong, still filled with boundless enthusiasm and optimism, proud of what we do.

Preparing The Plaintiff For Deposition

*By **John Meros***

One of the most important but often overlooked aspects of litigating the plaintiffs personal injury case is the plaintiff's deposition. We allow ourselves to think that a plaintiff's trial testimony is the key event for the plaintiff, when the *deposition* testimony will actually have a greater impact upon the case. Most personal injury cases don't go to trial, so the plaintiffs testimony is most often only heard in a deposition. By fully preparing the plaintiff and spending as much time as needed to enable the plaintiff to become a good deposition witness, you will enhance your chances of settling the case.

The following tips should help you set a format to follow in getting the plaintiff ready for this important event.

Always reinember that your client wants as much information about the deposition as you are willing to give. The more time you spend with your client in preparation, the better their perforinance will be.

Send the Client a Letter as Soon as the Deposition is Scheduled

Always notify the client in writing as soon as defense counsel sets the deposition date. Don't agree to a date for the deposition unless it allows you and your client enough time to prepare. When you send the client the notification letter, use that opportunity to tell the plaintiff all about the basics of a deposition. Your client will probably read the letter you send more than once. **A** deposition is a stressful event for the plaintiff, and your client n-ill be anxious to read any instructions you send about the deposition.

I use a standard notification letter that tells the client important things that I don't want to talk about for the first time in the pre-deposition conference I schedule a day or two before the deposition. Your tiine in the conference will be better spent reviewing documents, exhibits. and providing examples of tough questions the plaintiff will undoubtedly face in the deposition. **A** sample notification letter follows this article.

If your client cannot come to your office for the pre-deposition meeting, for whatever reason, go to the client's home. **A** face-to-face meeting is essential. Preparing the plaintiff over the telephone isn't good enough.

What to Cower at the Pre-Deposition Conference

First. never attempt to have the pre-deposition conference on the same day as the deposition. It will always be too little, too late. If you try to prepare the plaintiff on the same day as the deposition, you will have a nervous client, preoccupied with the tension and stress of the impending deposition. It will undoubtedly prove to be a last minute meeting that will be inadequate for the plaintiff's needs. Your client needs reassurance and confidence building *before the day of the deposition.* Meet their needs. Commit your schedule to allowing the plaintiff a meeting that will take as much tiine as the plaintiff needs to become confident for this important event.

What to cover

Interrogatory Answers/Responses to Requests for Admissions

Your client will have already answered interrogatories, or responded to requests for admissions You should already have provided your client with a copy of the interrogatories or admission responses so they can review them *before* your meeting Your client may not remember many of the answers Go over the interrogatory answers and tell the client that the defense attorney will question them about the interrogatory answers The plaintiff must be prepared to explain and stand by the interrogatory answers

Prior Statements

You should have obtained in discovery any statements your client made that are in the possession of the defendant If it is a work-related case. you should have already obtained all workers' compensation records that include statements signed by your client as to the occurrence Go over these and any other prior statements and have your client ready to resolve any inconsistencies that might arise Failing to review prior statements with your client, that you know or should have known exist, can be fatal There may be a logical explanation for the inconsistency, or the plaintiff may not have authored or read the version of the occurrence given to the workers' compensation bureau

The Complaint

Defense counsel sometimes bring out a copy of the complaint at the deposition Plaintiffs are often asked, 'What did you mean in paragraph 5 of the complaint'" or, in the intentional tort case, "What is the reason for your claiin in paiagraph 8 that my client intentionally exposed you to a known danger')" By the tiine of the deposition. your client should have an understanding of what the allegations are Your client should be able to give a biief explanation of what the plaintiff *now* knows

is the reason for the claim. An unprepared plaintiff will not be confident answering questions about what is contained in the complaint. You should ease their fears, in advance. by telling them that (a) the complaint is a legal document the attorney wrote and that the plaintiff doesn't have to understand all the terminology, (b) they cannot be expected to understand and translate a legal document. (b) but, they should still have a basic understanding of what the claims are and be ready to briefly say so.

Photographs

By the time of the deposition, you should have (from your investigation or discovery) photo-graphs of either the accident scene; the defective product, or the plaintiff and the plaintiff's injuries. Go over all photographs that can reasonably be expected to be introduced during the deposition. Whatever the photographs show, your client will be more comfortable if already shown the photograph.

We do our best to avoid all surprises at trial. It should be the same in deposition preparation. Don't let the plaintiff be surprised by anything at the deposition. Cover it all.

Have the Plaintiff List the Injuries and Damages

At the pre-deposition conference, have your client *write out* every injury they suffered, and every item of damages that can be thought of. The plaintiff should make a list of each and every aspect of their life that has been affected by their injury. In serious injury cases, this will be easy to do. The plaintiff should list all activities that they engaged in prior to the injury, and that are now restricted or discontinued entirely. By having the plaintiff write out all of their thoughts on this topic, they will be better able to relate them froin memory at the deposition. The list should not be memorized, and there should be no exaggeration. An unprepared plaintiff will undoubtedly not give a thorough response to the question that is likely to come: "Tell ine all you can about how this injury has affected your employment, your health and your activities.''

Videotaping

More depositions today of non-expert witnesses are being videotaped. Don't be surprised if your client's deposition is videotaped. You may want to practice in the office by briefly videotaping the plaintiff and playing it back for them to view. It may help the witness who has trouble making eye contact or whose body language just isn't right. If you don't own the videotape equipment, it is inexpensiveto rent for one day in an important case.

Should You Let Your Client Sketch Anything at the Deposition?

All too often, especially in motor vehicle cases, defense counsel asks or tells the plaintiff to sketch the accident scene. All it takes is one inaccurate sketch to convince you that it is too risky to ever allow again, and it is actually inappropriate to have the plaintiff sketch the accident scene.

Civil Rule 30(A) allows for a deposition upon *oral* examination. The rule itself and the Staff Note indicate that depositions are for the purpose of taking *oral* testimony. The Civil Rules do not clearly provide any authority for defense counsel to ask or tell the plaintiff to draw or sketch anything. Your client will not have the skill nor the knowledge to accurately sketch or diagram the accident scene. The sketch will invariably be inaccurate and misleading. I handle the defense's request for the sketch by objecting and pointing out that the Civil Rules don't authorize such a request. I point out on the record that the plaintiff is not an artist and cannot accurately sketch or diagram the layout of the accident scene. If defense counsel persists, I simply ask the plaintiff whether or not they can accurately sketch or diagram the scene. When the plaintiff says they cannot, the inquiry should go no further. I have never faced a motion to compel the plaintiff's sketching of the accident scene.

Never think the plaintiffs deposition is a routine or easy matter. Each one is unique and important. Give each one the complete preparation it deserves.

Recent Cases

Prejudgement Interest

Krupa v. Kodali, Cuy. Co. App. No. 7499.5, December 9. 1999. For Plaintiff/Appellee: Thomas P. O'Donnell and for Defendant/Appellant: Marillyn Fagan Damelio. Opinion by Michael Corrigan. Terrence O'Donnell and Timothy McMonagle concur.

Liability was not disputed in a case that resulted in a $72,500.00 verdict for the plaintiff. Approximately six months prior to trial, plaintiff demanded $125,000.00 for settlement of her claim. Five months later, or less than one month prior to the commencement of trial, defendant offered the sum of $25,000.00 to settle the claim. On the day of trial plaintiff lowered her demand to $115,000.00. On that same day defendant increased their offer to $41,000.00.

The trial court granted plaintiffs Motion for Prejudgment Interest, The trial court held a hearing on the Motion for Prejudgment Interest. The hearing consisted entirely of unsworn oral statements by the respective trial counsel There were no witnesses called to testify by any of the parties and no exhibits were received into evidence Moreover, no discovery was conducted prior to the hearing

The Court of Appeals reversed the trial court's granting of prejudgment interest holding that the trial court abused its discretion in ruling that plaintiff had not failed to make a good faith effort to settle the claim. Apparently, it was pivotal to the Court of Appeals that plaintiff did not respond to defendant's initial offer of settlement until the morning of trial with a lower settlement demand. The paucity of other negotiations along with the fact that the jury verdict was slightly closer to defendant's offer of settlement on the day of trial than the demand of plaintiff enabled the Court of Appeals to find an abuse of discretion. The Court of Appeals also noted that the plaintiff conducted no discovery prior to the prejudgment interest hearing such as requesting the claims file and deposing the claims adjuster.

Construcion Site - General Contractor Liability

Cefaratti v. Mason Structural Steel Co., Inc., Cuy. Co. App. No. 76100, November 24, 1999. For Plaintiff/Appellant. Christen R Patno and for Defendant/Appellee. Allen B. Glassman. Opinion by Patricia Blackman Leo Spellacy concurs. Terrance O'Donnell dissents.

Plaintiff was an employee of an independent subcontractor who fell from a stairwell while installing pipes at a construction site. Prior to the fall the general contractor had in place a guard rail on the stairwell. Thereafter, the general contractor removed the rail and gave no instruction to the workers to avoid the area.

Originally, the Court of Appeals had sustained the trial court's granting of summary judgment for the reason that the general contractor did not "actively participate" in the actual job which resulted in plaintiffs injury. However, the Supreme Court of Ohio reversed the decision of the Court of Appeals and remanded this case to the trial court to re-think the granting of summary judgment in light of the Supreme Court of Ohio's decision in *Sopkovich v. Ohio Edison Co.*, (1998), 81 Ohio St. 3d 628. However, the trial court again granted summary judgment.

On this occasion, the Court of Appeals reversed the decision of the trial court and applied *Sopkovich* wherein the Supreme Court of Ohio refined the law applicable to the liability of general contractors in Ohio. In *Sopkovich*, the Court held that a general contractor can be held liable to the independent contractor's employees if: (1) the general contractor exercises control over the work activities; or (2) the general contractor retains control over a critical variable in the work place. In this case, the Court of Appeal held that there remained a genuine issue of material fact as to whether the general contractor retained and exercised control over a critical variable in the working environment, i.e., the metal staircase frame without temporary safety railing. The Court of Appeals went on to note that the holding in *Sopkovich* made the fact that the general contractor did not actively participate in the specific job activity of

the plaintiff irrelevant as to whether the general contractor could be held liable.

Medical Malpractice - Informed Consent

The Court of Appeals reversed the trial court's grant of summary judgment and held that a genuine issue of material fact existed as to whether the defendant breached its duty to provide informed consent under circumstances where plaintiff participated voluntarily in a clinical study. Plaintiff had developed a particular form of cancer and was informed that he had a *25%* chance of surviving the next five years. Defendant physician informed plaintiff that he was an ideal candidate to participate in a clinical study wherein one group of patients would be treated with surgery and radiation and the other group would be treated with chemotherapy prior to the surgery and radiation. Plaintiff was informed that if he opted out of the clinical study he would still be treated with the standard surgery and radiation therapy. The defendant physician informed plaintiff that he could not pick which group into which he would be placed but that when he was assigned to the group he would be informed of which treatment he would receive. Plaintiff was eventually assigned to that group which received the standard surgery and radiation treatment.

However, plaintiff elicited evidence that the defendant physicians were aware of studies which demonstrated significantly better results and increased longevity when patients were treated with chemotherapy prior to the "standard treatment," Moreover, while the Cleveland Clinic did not provide a treatment regimen outside of the clinical study wherein a patient could receive the chemotherapy prior to the surgery and radiation, there existed evidence that other medical facilities did provide such treatment apart from any clinical study.

Uninsured Motorist Coverage

Bogden v. Allstate Insurance Co., Cuy. Co. App. No. 75 141, November 10, 1999. For Plaintiff/Appellant: Todd O. Rosenberg and for Defendant/Appellee: Christopher C. Esker, Frank G. Mazgaj and Robert L. Tucker. Opinion by Michael J. Corrigan. James Porter and James D. Sweeney concur.

Plaintiff was injured in an automobile accident in Michigan The State of Michigan is a "no fault" insurance state wherein recovering for both economic and noneconomic damages is precluded absent death, serious and permanent loss of bodily function or permanent serious disfigurement The plaintiff did not suffer serious injury or permanent disfigurement

In *Kurent v. Farmers Insurance of Columbus, Inc.*, (1991), *62* Ohio St. 3d *252*, it was held that "when an Ohio resident is injured in an automobile accident in a no-fault insurance state, by a resident of that state who is insured under that state's no-fault insurance laws, the Ohio resident's legal right to recover from the tortfeasor/motorist must be determined with reference to the no-fault state's laws." Where the no-fault state does not recognize a claim against the tortfeasor/motorist, the Ohio insured is not entitled to collect uninsured motorist benefits from his own insurer. This is because the injured party is not legally entitled to recover from the tortfeasor.

In the case at bar, plaintiff argued that application of Michigan's no-fault insurance law does not deny plaintiff of legal entitlement to recover but, rather, conveys immunity upon the tortfeasor. The plaintiff reasoned that since plaintiffs are entitled to access their uninsured motorist coverage where a defendant/tortfeasor is protected by immunity, that the plaintiff herein should be able to access her uninsured motorist coverage. The Court of Appeals disagreed and affirmed the Trial Court's grant of summary judgment finding that rather than the Michigan tortfeasor being blanketed with immunity, the effect of the Michigan no-fault law is that plaintiff never possessed a cause of action against the tortfeasor and, therefore, was never legally entitled to recover against the tortfeasor motorist.

■ ■ ■ ■ ■

Meurchke, M D., v. Storey, Cuy. Co. App. No. 74365, October *28,* 1999. For Plaintiff/Appellant: Robert V. Housel and for Defendants/Appellees: Laura Ann E. Swanswinger, Claudia S. Harrington, Ronald A. Rispo and Dale E. Markworth. Opinion by Ann Kilbane. Diane Karpinski and John Patton concur.

Plaintiff is an orthopedic surgeon who was operating a motor vehicle owned by his business Robert C. Meurchke, M.D., Inc. (RCM, Inc.) RCM leased the motor vehicle from the owner, a company named JAAK, Inc., of which Meurchke was president but the entire stock of which was owned by his five daughters. At the time of the accident and injury, RCM, Inc., possessed a commercial general liability insurance policy which provided coverage pursuant to an endorsement for "hired and non-owned automobiles". Indeed, this policy provided one million dollars in coverage for claims arising out of "hired and non-owned auto liability" claims. This policy also carried umbrella liability coverage. At the same time: Meurchke possessed his own policy of liability insurance with a limit of Five Hundred Thousand Dollars, However, this personal policy also carried a Two Million, Five Hundred Thousand Dollar umbrella. As to the Two Million, Five Hundred Thousand Dollar umbrella policy issued personally to Dr. Meurchke, St. Paul Insurance Company claimed that Meurchke had rejected uninsured motorist coverage by marking a box and signing his name upon a form. However, the form did not state that Meurchke was entitled to uninsured motorist coverage in the amount of the Two Million, Five Hundred Thousand Dollar umbrella policy limits and that he would receive such coverage unless rejected. The trial court granted summary judgment in favor of both insurance companies finding that as to the company policy (RCM), that it was a commercial insurance policy and not an automobile liability insurance policy. The trial court reasoned that because the company policy was not an automobile liability insurance policy that it was not required to and did not provide underinsured motorist coverage. With regard to the personal automobile liability insurance policies of Dr. Meurchke, the trial court held, after holding an evidentiary hearing, that Dr. Meurchke had rejected expressly the provision of underinsured motorist coverage under the umbrella policy and that St. Paul's form complied with the requirements of Ohio Revised Code Section 3937.18.

The Court of Appeals reversed holding that, as a matter of law, it was irrelevant that the GRE policy issued to the company was primarily a commercial policy. The Court of Appeals noted that the policy did provide coverage for hired and non-owned automobiles, Since the vehicle being operated by Dr. Meurchke qualified as an "hired auto", GRE was required to provide uninsured motorist benefits in the amount of the Two Million, Five Hundred Thousand Dollar liability policy limit of the commercial policy. The Court of Appeals relied upon the recent Supreme Court of Ohio decisions in *Selander v. Erie Insurance Group*, (1999), 85 Ohio St. 3d 541 and *Scott-Pontzer vs. Liberty Mutual Fire Insurance Co.*, (1999), 95 Ohio St. 3d 660 in ruling that R.C. 3937.18 does not distinguish between commercial and consumer automobile or motor vehicle policies. GRE's policy, like that of the company policy in *Selander*, provided the insureds with liability coverage for claims arising out of the use of "hired" and "non-owned" vehicles. The *Selander* Court held that "where motor vehicle liability coverage is provided, even in limited form, uninsured/underinsured coverage must be provided."

As to Dr. Meurchke's personal automobile liability insurance policy and personal umbrella policy issued by St. Paul, the Court held that the form provided on the personal umbrella coverage did not comply with R.C. 3937.18 because it did not expressly inform Meurchke that he was entitled to uninsured motorist benefits in the amount of the liability coverage on his personal umbrella policy and further instruct him that he must expressly reject such coverage. Instead, the Court of Appeals found that a form which provided various boxes for the insured to check and a signature line at the bottom of the form did not conform with the express rejection requirement of R.C. 3937.18. Moreover, the Court of Appeals held that the fact that the trial court held a hearing where supplemental oral testimony was introduced subsequent to the Motions for Summary Judgment, required, as a matter of law, a finding by the trial court that genuine issues of material fact existed and precluded the grant of summary judgment. The Court of Appeals relied upon the Supreme Court case of *Carrabine Construction* Co. ***vs.*** *Chrysler Realty Corp.*, (1986), *25* Ohio St. 3d 222 and the Eighth District Court of Appeals recent decision in *Stanaczyk* ***vs.*** *Fontanez*, Cuy. Co. App. No. 72130, March 12, 1998, unreported, for its determination that supplemental oral testimony submitted at a hearing after Motions for Summary Judgment have been filed require a finding that genuine issues of material fact remain to be litigated.

Verdicts & Settlements

John Doe, et al. v. XYZ Company, et al.

Type of Case: Negligence and Products Liability
Settlement: $2,550,000
Plaintiff's Counsel: Charles Kampinski, Christopher Mellino, Laurel Matthews
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: October 1999
Insurance Company: Not Listed
Damages. Frostbite; removal of lips

Summary: John Doe is 76 years old. In August of 1998 he was residing in Defendant Nursing Home. While under their care, he was receiving supplemental liquid oxygen through a facemask, which was covering his mouth. The tank and valve used to supply the oxygen malfunctioned causing John Doe to suffer frostbite to his face and mouth. His lips eventually had to be removed.

XYZ Company supplied the liquid oxygen base unit to the nursing home. The base unit was manufactured by Defendant LMNOP. It was graduated from 0 to 8 liters per minute.

The oxygen flow for John Doe was to be set at 7 liters per minute. Sometime during the morning of August 21, 1998, the flow of the oxygen delivery system was increased above the specified 7 liters per minute by the nursing home employees. When the flow rate reaches 28 liters per minute, the oxygen comes out at a temperature below freezing. Defendant ABC was aware of the dangers associated with excess flow and should have installed a restrictor into the base unit so that it could not have been operated at a flow rate beyond its capability to warm the oxygen.

Defendant LMNOP inanufactured a defective flowmeter because the metering portion was capable of flowing much higher than the measuring portion could measure. This flowmeter could flow 50 liters per minute but was only capable of measuring up to 8 liters per minute. As a result, a user could operate at a very high flow rate without knowing it.

A restrictor in the flowmeter orifice is all that was necessary to limit the flow. XYZ Company did not use a restricted flowmeter assembly on the liquid oxygen delivery system.

Plaintff's Experts: Gary A. Derian, P.E. (Forensic Engineer); Thomas Vaughan, Jr., M.D. (Medical Dir. Respiratory Care Services)
Defendant's Experts: Martin Andonian (Engineer); Bruce H. Barkalow, Ph.D., P.E. (Biomedical and Clinical Engineer); Thomas M. Flynn (Engineer); Gretchen Hazle, R.N. (Nurse); Dean Hess, Ph.D., R.R.T. (Anesthesia); Donald A. Kadunc, Ph.D., P.E. (Engineer)

Rita Radowanic, et al. v. Mednet Physicians, Inc., et al.

Type of Case: Medical Malpractice
Verdict: $4,290,540
Plaintiff's Counsel: Charles Kampinski, Christopher Mellino, Laurel Matthews
Dejendant's Counsel: David J. Hanna, Attorney for Mednet Physicians, Inc.; Anna Carulas, Attorney for Pathology Associates of University Hospitals
Court: Cuyahoga County Common Pleas, Judge Nancy McDonnell
Date. October 1999
Insurance Company: Not Listed
Damages: Progression of cancer; probable death

Summary: This was a medical malpractice action brought by Rita and Richard Radovanic. Mrs. Radovanic presented to Dr. Nancy Cossler, an OB/GYN who was an employee of Mednet Physicians, Inc., in March 1995 complaining of vaginal bleeding. At that time, she was 50 years old, post-menopausal and taking hormone replacement therapy. Dr. Cossler performed an endometrial biopsy. The report was read as showing atypia. Even though the pathologists were unsure of their diagnosis, they had no further contact with Dr. Cossler. The report did include a statement to do additional follow-up if clinically indicated. Dr. Cossler told Rita the biopsy was negative and reassured her that she was fine.

Dr Cossler admitted that had she known Rita had a cancerous or pre-cancerous condition, she would have done a hysterectomy in March 1995 and Rita would have been cured. Instead, despite Rita having bleeding intermittently over the next three years, Dr. Cossler did not do an appropriate work-up of her symptoms. Dr. Cossler claimed the pathology report was negative or benign whereas the pathologists claimed it was positive and sufficiently put Dr. Cossler on notice of either a cancerous or pre-cancerous condition.

In May 1998, because Dr. Cossler was out of town, Rita was seen by Dr. Timothy Barrett. When Dr. Barrett reviewed Rita's chart and saw her history of bleeding, he immdiately ordered another endometrial biopsy. This biopsy was read by a different pathologist who diagnosed advanced cancer

Rita underwent a total hysterectomy with removal of lymph nodes. She then underwent a course of radiation therapy. Because of the three year delay in diagnosis, the cancer progressed to a much more aggressive form and metastasized, meaning Rita will probably die from this disease.

Plaintiff's Experts: Melvyn Ravitz, M.D. (OB/GYN);
David Schwartz, M.D. (Pathology);
John F. Burke, Jr., Ph.D. (Economist)

Defendant's Experts James F Barter, M D (GYN/Oncology). Michael S Baggish, M D (OB/GYN);
Christopher P Crum, M D (Pathology),
Peter Marcus, M D (Pathology),
John Hutzler, Jr , M D (OB/GYN);
Brigitte Miller, M D (Gynecologic Oncology)

Jane Doe v. ABC Hospital

Type of Case Medical Malpractice
Settlement $2,500,000
Plaintiff's Counsel Michael F Becker
Defendant's Counsel Withheld
Court Cuyahoga County
Date July 1999
Insurance Company Self-Insured
Damages Hemiparesis and some cognitive iinpainnents

Summary: Plaintiff, now age 22, underwent neurosurgical therapy for an arachnoid cyst at age 13. During the arachnoid cyst fenestration, there was an inadvertent misadventure by advancing the endoscope into the parenchyma. This parenchymal injury caused bleeding and further brain injury.

Plaintiff's Experts: Barry Layton (Neuropsychologist); Gordon McComb (Neurosurgeon)
Defendant's Experts: Lucia Zamaroni (Neurosurgeon)

Jane Doe v. ABC Hospital

Type of Case: Medical Malpractice
Settlement: $920,000
Plaintiff's Counsel: Michael F. Becker
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas
Date: May 1999
Insurance Company: Self-Insured
Damages: Advanced cancer affecting 11 out of 18 lymph nodes Plaintiff had to undergo bone marrow therapy Plaintiff is currently cancer free and to date has avoided metastases.
Plaintiffs expert opined a probable reduced life expectancy of 12-15 years as a result ofthe delay in diagnosis

Summary: Delay in diagnosing breast cancer.

Plaintiff's Experts: Dr. Lucy Freedy (Radiology)
Defendant's Experts: Nathan Levitan, M.D.

Hope Jasmine Diver, etc., et al. v. Anthony Gingo, Jr., M.D., et al.

Type of Case: Medical Malpractice
Verdict: $15,000,000 for Hope; $2,000,000 for Hope's parents
Plaintiff's Counsel: Michael F Becker
Defendant's Counsel, Withheld
Court. Cuyahoga County Cominon Pleas
Judge Aurelius
Date. November 1999
Insurance Compariy: PHICO
Damages · Mild cerebral palsy, moderate mental retardation, permanent kidney failure.

Summary: There was an abruption at term where there was both a maternal and fetal bleed therefrom. Within 45 minutes, Plaintiff was at Southwest General Hospital. At such time, Defendant obstetrician failed to timely do an emergency C-section, and during the delay of the ultimate C-section, the nurses failed to engage in appropriate intrauterine resuscitation (most importantly, administration of oxygen).

Plaintiff's Experts: Dr. Ben Brouhard (Pediatric Nephrology)

Defendant's Experts: Robert Vannucci (Pediatric Neurology); Frank Boehm (Perinatologist); Linda DiPasquale, R.N. (Nursing Expert)

Jane Doe, Adm. v. Dr. M.D., et al.

Type of Case: Medical Malpractice
Settlement: $1,000,000
Plaintiff's Counsel: Dennis R. Lansdowne
Defendant's Cozinsel: Withheld
Court: Lorain County, Judge Lynette McGough
Date: October 1999
Insurance Company: Not Listed
Damages: Decedent sustained a severe laceration to his leg, While undergoing a debridement of his leg, he arrested on the operating room table and died.

Summary: Decedent was a twenty-nine year old single male mho sustained injuries in Lake Erie when he was thrown from his fishing boat and then slashed by the propeller of another boat. He was taken to Defendant Hospital, where he underwent a surgical procedure to clean out the leg wound. **A** second surgical procedure was performed several days later to further debride the leg wound. During this second procedure the Decedent lost blood pressure, arrested and died. Plaintiff claimed the Defendant failed to adequately monitor Decedent's falling blood pressure in suregery and failed to discover a liver laceration. Defendants claimed the blood pressure was appropriate given the Decedent's infection and that Decedent died of an unpreventable pulmonary embolus.

Plaintiff's Experts: E.F. Klein, Jr., M.D. (Anesthesiologist); Marc J. Shapiro, M.D. (Trauma; Surgery)

Defendant's Experts: Harry J. Bonnell, M.D. (Forensic Pathology); Robert Kirkwood, M.D., F.A.C.R. (Radiology); Randall E. Marcus, M.D. (Orthopedic Surgery); Clyde E. McAuley, M.D., F.A.C.S. (Trauma Surgery); Rita K. Cydulka, M.D. (Emergency Medicine); Cathy **A.** Raab, R.N. (Nursing); Ross E. Zumwalt, M.D. (Forensic Pathology); Carol A. Hirschmann, M.D. (Anesthesiology/Critical Care); Robert D. Hoffmann, M.D., Ph.D. (Autopsy/Pathology)

Jane Doe, Adminix., etc. v. Hospital, et al.

Type of Case. Medical Malpractice
Settlement: $850,000
Plaintiff's Counsel: Dennis R. Lansdowne
Defendant's Counsel: Withheld
Court' Cuyahoga County, Judge Patricia A Cleary
Date. October 1999
Insurance Company: Not Listed
Damages. Decedent died on February 5, 1996 as a result of cancer of the brain, kidneys, hip, femur and lung

Summary: Decedent suffered a misdiagnosis of cancer of the kidney, which in turn spread to his brain, hip, femur and lung, resulting in his untimely death at age 55.

Plaintiff's Experts: Ted Barnett, M.D. (Radiology); Fred S. Kuyt, M.D. (Urology); Neal Rosen, M.D., Ph.D. (Oncology)

Defendant's Experts: Dean A. Nakamoto, M.D. (Radiology); Robert H. Hamor, M.D. (Diagnostic Radiology); Jonathan C. Boyd, M.D. (Urology); Robert C. Bahnson, M.D. (Urology)

Jane Doe, et al. v. Dr. Roe

Type of Case Medical Malpractice
Settlement $300,000
Plaintiff's Counsel Dennis R Lansdowne
Defendant's Counsel Withheld

Court Cuyahoga County.
Judge Daniel O Corrigan
Date August 1999
Insurance Coinpany PIE Mutual Insurance Company
Damages Plaintiff suffered a poorly repaired episiotomy. leaving her with constant pain. tenderness. incontinence and the inability to engage in sexual relations

Summary: Plaintiff is a young woman who had her first baby on June 11, 1994. Following the birth of her baby, Plaintiff began experiencing incontinence, tremendous problems controlling flatus, constant pain and tenderness, and the ability to engage in sexual relations. Plaintiffs claimed that the Defendant failed to adequately follow the Plaintiff and her third degree laceration. Defendant claimed the tear was unavoidable and followed her appropriately.

Plaintiff's Experts: Michael S. Baggish, M.D. (OB/GYN)
Defendant's Experts: Laszlo Sogor, M.D. (OB/GYN); Robert D. Madoff, M.D. (Surgery)

Gerlene Hannah v. Creighton Heyl, M.D.

Type of Case: Medical Malpractice
Settlement: $122,500
Plaintiff's Counsel: William Hawal
Defendant's Counsel: Douglas Leak
Court: Cuyahoga County,
Judge McCafferty
Date: October, 1999
Insurance Company: OIGA
Damages: Collapse of distal radius fracture

Summary: Plaintiff suffered Colles fracture which was treated by casting. Fracture latter collapsed resulting in a loss of wrist extension.

Plaintiff's Experts: David Robertson, M.D.
Defendant's Experts: Stephen Cheng, M.D.

Lazzaro, Admrx. v. Huffy Corporation

Type of Case: Product Liability
Settlement: $300,000
Plaintiff's Counsel: William Hawal, Mary C. Cavanaugh
Defendant's Counsel: Matthew O'Connell
Court: Montgomery County,
Judge Riley
Date: October, 1999
Insurance Company: Self-Insured
Damages: Wrongful death

Summary: 8 month old resident of Sweden drowned when suction cups of splash seat became disconnected from surface of bathtub. Product had been recalled in the U.S. but not in Europe.

Plaintiff's Experts: None
Defendant's Experts: None

Jonathan Kish, et al. v. William Bohl, M.D.

Type of Case: Medical Malpractice
Settlement: $225,000
Plaintiff's Counsel: William Hawal
Defendant's Counsel: Forrest Norman, Jr.
Court: Cuyahoga County,
Judge Nancy McDonnell
Date: October, 1999
Insurance Company: OIGA
Damages: Intra-articular knee damage froin infection.

Summary: Patient underwent arthroscopic surgery for repair of ACL and developed post-op infection which went undiagnosed for 2 months.

Plaintiff's Experts: David Robertson, M.D.
Defendant's Experts: William D. Barker, M.D.

Names Withheld

Type of Case: Medical Malpractice/Wrongful Death
Settlement: $500,000
Plaintiff's Counsel: Peter H. Weinberger, Stuart E. Scott
Defendant's Counsel: Withheld
Court: Muskingum County
Date: October, 1999
Insurance Company: Self-Insured Hospital/OIGA
Damages: Fetal death

Summary: VBAC labor - failure to respond to non-reassuring signs of fetal distress resulting in fetal death from uterine rupture.

Plaintiff's Experts: William Spellacy, M.D.
Defendant's Experts: Michael Haninger, M.D.; Stephen DeVoe. M.D.

William Lococo, et al. v. Royal Insurance

Type of Case Automobile - Underinsurance
Verdict $500,000 (37% comp)
Plaintiff's Counsel Leon M Plevin, Ellen M McCarthy
Defendant's Counsel Harry Sigmier
Court Cuyahoga County Common Pleas, Judge Patricia Cleary
Date January, 2000
Insurance Company Royal Insurance
Damages Tibial plateau fracture, malleolus fracture, mid shaft tib-fib fracture

Summary: Plaintiff was driving a motorcycle southbound in the left lane when tortfeasor allegedly pulled into his lane from the curb cutting him off. Tortfeasor, whose carrier paid $12,500 limits, claimed she was always in the left lane and was rear-ended by Plaintiff, There were no witnesses except three passengers in tortfeasor's car.

Plaintiff's Experts: John Sontich, M.D.
Defendant's Experts: None

Hall v. USAir Boeing, et al.

Type of Case: Aviation - Wrongful Death
Settlement: $5,500,000
Plaintiff's Counsel: Jamie R. Lebovitz
Defendant's Counsel: Withheld
Court: Cook County (Chicago, IL)
Date: December, 1999
Insurance Company: Associated Aviation Underwriters
Damages; Decedent: passenger on USAir Flight 427 which crashed on approach to Pittsburgh International Airport. he is survived by adult son and adult daughter.

Summary: Plaintiff claimed that crash was caused by several factors including defective rudder power control unit, lack of redundancy features in rudder system, and inadequate/unsafe block maneuvering speeds.

Plaintlff's Experts: Roger Scheudele (Aircraft Design); Charles Dundove (Aircraft Systems); kchard McSwain (Metallurgist); Ned Clark (Aerodynamics); Donald Sommers (Engineer); Dave Simmon (Pilot)
Defendant's Experts: 30 + experts identified

Estate of David Doe v. USAir Boeing, et al.

Type of Case: Aviation - Wrongful Death
Settlement: $3,000,000
Plaintiff's Counsel: Jamie R. Lebovitz
Defendant's Counsel: Withheld
Court: U.S. District Court, W.D. Pennsylvania
Date: September, 1999
Insurance Company: Associated Aviation Underwriters
Damages: Decedent, passenger on USAir Flight 427 which crashed on approach to Pittsburgh International Airport. Decedent is survived by parents, brother and sister.

Summary: Crash was caused by several factors including defective rudder power control unit, lack of redundancy features in rudder system, and inadequate/unsafe block maneuvering speeds.

Plaintiff's Experts: Roger Scheudele (Aircraft Design); Charles Dundove (Aircraft Systems); Richard McSwain (Metallurgist); Ned Clark (Aerodynamics); Donald Sommers (Engineer); Dave Simmon (Pilot)
Defendant's Experts: 30+ experts identified

Jane Doe Adm. v. Laboratories

Type of Case: Medical Malpractice
Settlement: $1,100,000
Plaintiff's Counsel: David M. Paris
Defendant's Counsel: Withheld
Court: Cuyahoga County Common Pleas, Judge Timothy McCormick

Date: November: 1999
Insurance Company: Withheld
Damages: Cervical cancer — wrongful death

Summary: Single 49 year old woman with no children had a Pap in 7/96 interpreted as "reactive associated with inflammation." The Pap was repeated in 8/96 and interpreted as "normal". In fact, it should have been interpreted as HGSIL or carcinoma in situ. She was ultimately diagnosed in 6/97 with Stage IIIB cervical cancer and died in 1/99.

Plaintiff's Experts: Kenneth McCarty, M.D.
Defendant'sExperts: Edmund Cibas, M.D.; Nadia Al-Kasai, M.D.; Carl Groppe, M.D.

Smith, Adm. v. United Ohio Ins.
Type of Case: Auto - Underinsurance Coverage
Settlement: $900,000
Plaintiff's Cozrnsel: David M. Paris
Defendant's Counsel: James Glowacki
Court: Huron County,
Judge Earl McGimpsey
Date: November, 1999
Inszirance Company: United Ohio Insurance Co.
Damages; Wrongful death. No conscious pain and suffering.

Summary: Decedent was killed instantly in a head-on collision with an underinsured tortfeasor. The family's underinsurance carrier previously settled for $500,000. Counsel prevailed in establishing underinsured motorist coverage in decedent's husband's farm policy consistent with Goetteninoeller v. Meridian Mut. Ins. Co., Case No. 362089 (Franklin Cty. 6/25/96), unreported.

Plaintiff's Experts: None
Defendant's Experts: None

John Doe, a minor, et al. v. John Doe, M.D.
Type of Case Medical Malpractice
Settlement $260.000
Plaintiff's Counsel William S Jacobson
Defendant's Cozrnsel Julia Wiley
Court Allen County,
Judge Richard Warren

Date: October, 1999
Inszirance Company: OIGA
Damages: Minor Plaintiff suffered a brachial plexus injury as a result of a shoulder dystocia at birth.

Szimmary: Plaintiff was 9.7 pounds at birth and a shoulder dystocia was encountered. Defendant claimed that in order to reduce the shoulder dystocia he performed the standard maneuvers including the McRobert's Maneuver but did not document it in the chart. The McRobert's Maneuver involves a knee to chest motion which Plaintiff claimed was never done. The nursing staff did not recall because of the length of time after birth in which the suit was brought. Ultimately the case came down to an issue of fact.

Plaintiff's Experts: Jay Trabin, M.D. (Obstetrician); Max Witznitzer, M.D. (Pediatric Neurologist)
Defendant's Experts: James Nocon, M.D. (Obstetrician); Greg Nemunitis, M.D. (Physical Medicine and Rehabilitation)

Jane Doe, a minor, et al. v. John Doe, M.D.
Type of Case Medical Malpractice
Settlement $750,000
Plaintiff? Counsel William S Jacobson, Leonard Davis
Defendant's Counsel Thomas Allison
Court Cuyahoga County,
Judge Nancy McDonnell
Date October 1999
Insurance Company CNA
Damages Brachial plexus injury as a result of shoulder dystocia during birth

Summary: Plaintiff's mother was pregnant with her third child and had encountered a shoulder dystocia with her second child. She had a normal pregnancy and labor and the child was approximately 9 pounds at birth. The Defendant argued that he had recoininended to Plaintiff that this child be delivered by cesarean section because of his concerns about another shoulder dystocia. Plaintiff argued that Defendant never recommended a cesarean section. Although the Defendant had documented in his prenatal records as well as in the hospital chart that, the Plaintiff' had declined an operative delivery, there was other evidence to suggest that she had not.

Plaintiff's Experts: Stuai-t Edelburg, M.D. (Obstetrician): Mark Schei-, M.D. (Pediatric Neurologist); Rod Durgin, Ph.D. (Vocational Expert): John Burke, Ph.D. (Economist)
Defendant's Experts: James Nocon, M.D. (Obstetrician)

Jane Doe, a minor, et al. v. John Doe, M.D., et al.

Type of Case: Medical Malpractice / Product Liability
Settlement: $425,000
Plaintiff's Counsel: William S. Jacobson
Defendant's Counsel: Gregory Rossi, Douglas Leak
Court: Cuyahoga County,
Judge Stuart Friedinan
Date; Not Listed
Insurance Company: OIGA for Def. John Doe, Self-Insured for Def. John Foe Corp.
Damages: Neurological damage to lower extreinities resulting in impaired ability to ambulate normally.

Summary: Plaintiff was born with hemangiomas, which are tuinors of blood vessels, They are not life threatening and will typically reabsorb themselves after some years but can threaten the eyes if they are in close proximity. Steroidal treatment failed and Plaintiff was entered into an experimental study in which Interferon, which was a drug approved for use in chemotherapy, was utilized for the treatment of hemangiomas. The drug was not FDA approved for this use. Plaintiff argued that Defendant Doctor and Drug Coinpany were negligent in failing to properly research the known nerotoxic effects of the drug which would have resulted in discontinuance of the drug when the neurological symptoms began.

Plaintiff's Experts:
Arthur G. Lipman, Pham. D. (Pharinacology); Judah Folkman, M.D. (Cancer Research); John B. Mulliken, M.D. (Plastic Surgeon); Victor Vogel, M.D. (Cancer Research); Charles Barlow, M.D. (Pediatric Neurologist)
Defendant's Experts: Too numerous to list

Jane Doe, Admn. v. XYZ Company, et al.

Type of Case Premises Liability / Product Liability
Settlement $3,200,000
Plaintiff's Counsel Andrew P Krembs, Richard C Alkire, David Paris
Defendant's Counsel Dennis Miller, Michael Garvin
Court Hamilton County Common Pleas
Date March, 1999
Insurance Company Great American Insurance Company; Monroe Guarantee InsuranceCompany
Damages Burns over 46% of the decedent's body resulting in his death approx 6 weeks thereafter

Summary: Plaintiff's decedent was a business invitee on the premises of the Defendant to make a sales call, While there, he was left unattended on the pouring deck of an automated molten aluminuin lost foam line. While on the pouring deck, he was struck by a robotic ladler ann system, designed, manufactured and installed by another defendant, resulting in molten aluminum being poured over 46% of his body surface. He lived 5-6 weeks before his demise.

Plaintiff's Experts: Siinon Tainny, P.E. (Mechanical Engineer); George L. Smith, Ph.D., P.E. (Industrial Engineer); John F. Burke, Jr., Ph.D. (Economist); Camille B. Wortman, Ph.D. (Psychologist); Richard J. Kagan, M.D. (Surgeon); Leopold Berger (Coroner)
Defendant's Experts: James M. Miller, P.E., Ph.D. (Mechanical Engineer); Thomas R. Huston, Ph.D., P.E. (Industrial Engineer); Thomas Hilbert (Economist); Harold Bryant

John Doe v. XYZ Company, et al.

Type of Case: Premises Liability / Product Liability
Settlement: $200,000
Plaintff's Counsel: Andrew P. Krembs, kchard C. Alkire, David Paris
Defendant's Cozinsel: Dennis Miller, Michael Garvin
Court: Hamilton County Coininon Pleas
Date: March, 1999
Insurance Company: Great American Insurance Company; Monroe Guarantee InsuranceCompany
Damages: First and second degree burns to a portion of his left hand and left foot; post traumatic stress disorder.

Szimmary: Plaintiff was a business invitee on the premises of the Defendant to make a sales call. While there, he was left unattended on the pouring deck of an automated molten aluminum lost foam line. While on the pouring deck, his co-worker was struck by a robotic ladler arm system, designed, manufactured and installed by another defendant, resulting in molten aluminum being poured over his co-worker's body surface. Some molten metal splashed on him.

Plaintiff's Experts: Simon Tamny, P.E. (Mechanical Engineer); George L. Smith, Ph.D., P.E. (Industrial Engineer); John F. Burke, Jr., Ph.D. (Economist); Camille B. Wortman, Ph.D. (Psychologist); Richard J. Kagan, M.D. (Surgeon); Leopold Berger (Coroner)
Defendant's Experts: James M. Miller, P.E., Ph.D. (Mechanical Engineer); Thomas R. Huston, Ph D., P.E. (Industrial Engineer); Thomas Hilbert (Economist); Harold Bryant

Richard E. Evans, et al. v. Jason S. Hembury, et al.

Type of Case: Automobile
Settlement: $300,000 (policy limits)
Plaintiff's Counsel: Richard Alkire
Defendant's Counsel: G. Michael Curtin, William M. Oldham
Court: Summit County Common Pleas, Judge John R. Adams/Beth Whitmore
Date: March, 1999
Inszirance Company: State Farm; West American Insurance Company
Damages: Acetabular fracture left hip, fracture of left foot and collateral ligament strain to right thumb and injury to left knee.

Summary: Plaintiffs vehicle was struck head-on.

Plaintiff's Experts: John Wood, M.D. (Orthopaedic Surgeon); Jude Smith, M.D. (Orthopaedic Surgeon)
Defendant's Experts: Not Listed

Richard Greer v. American Freightways, et al.

Type of Case; Motorcycle v. Semi Tractor-Trailer
Settlement: $700,000
Plaintiff's Counsel: Richard C. Alkire
Defendant's Counsel: Kenneth Abbarno
Court: Cuyahoga County Common Pleas
Date: April, 1998
Insurance Company: Self-Insured Defendant
Damages: Crush injury to left side of face, orbit and right wrist fracture.

Summary: Plaintiff motorcycle operator while proceeding in the curb lane struck the passenger side of the tractor of a tractor-trailer rig as it was making a right-hand turn into a private drive across and in front of Plaintiff, Wheterh Plaintiff was speeding was an issue. Also, Plaintiff did not wear a helmet.

Plaintiff's Experts: Robert Senkar (Accident Reconstruction); Andrew Berman, D.D.S. (Dental Surgeon); Mark Levine, M.D. (Opthalmological Surgery); Jeffrey A. Goldstein, M.D. (Reconstructive & Plastic Surgery); William Seitz, M.D. (Orthopaedic Surgeon); Lorenzo K. Parks (Demonstrative Exhibits)
Defendant's Experts; David Uhrich, Ph.D. (Accident Reconstruction)

John A. Howells, et al. v. Arthur Steffee, M.D., et al.

Type of Case: Medical Malpractice
Settlement: $412,500
Plaintiff's Counsel: Andrew P. Krembs
Defendant's Counsel: Thomas H. Allison, Jeffrey A Healy, John Cullen
Court: Cuyahoga County Common Pleas, Judge Timothy J. McGinty
Date: April, 1999

Insurance Company: Ohio Insurance Guarantee Association; Fairview Health System

Damages Extensive pain and suffering and bone loss as a result of the failure to adequately treat a post-opeiative infection in the spine

Summary Medical inalpractice action against Orthopaedic surgeon and Infectious Disease Specialist for failure to adequately treat a diagnosed post-operative infection following the iinplantation of Steffee plates in the lumbar spine of Plaintiff

Plaintiff's Experts: Andrew M. Roth, M.D. (Orthopaedic Surgeon); Calvin M. Kunin, M.D. (Infectious Disease); Fraiicis Boumphrey, M.D. (Orthopaedic Surgeon)
Defendant) Experts: Edward C. Benzel, M.D. (Neurosurgeon); Richard J. Blinkhorn, Jr., M.D. (Infectious Disease)

Judith A. Marks, et al. v. Gladys B. Thrasher

Type of Case Automobile Accident
Settlement $112,500
Plaintiff's Counsel Andrew P Krenibs
Defendant's Counsel Jeffrey Van Wagner, Lawrence F Peskin
Court Geauga County Coniinon Pleas
Date August, 1998
Inszirance Company Colonial Penii Insurance
Damages Herniated cervical disk

Summary: Plaintiff was a passenger in a motor vehicle which was rear-ended by the Defendant.

Plaintiff's Experts. Jung U Yoo, M.D. (Orthopaedic Surgeon)
Defendant's Experts: Not Listed

Norman v. AFP Distributors, Inc., et al.

Type of Case Auto v Seini-Tractor-Trailer
Settlement $250.000 (Plaintiff Capitena)
Plaintiff's Counsel Andrew P Krenibs, James J Sartini
Defendant s Counsel Robert J Kent
Court Athens County Coininon Pleas, Judge L Alan Goldsberiy
Date April. 1998
Insurance Company: Westfield Insurance
Damages: Multiple bruises and lacerations throughout her body, broken teeth and post-traumatic stress disorder.

Summary: Plaintiff was a passenger in a motor vehicle in which the Defendant, operating a tractor-trailer (Bobtail) lost control and went left of center.

Plaintiff's Experts: John M. Brace, D.O.; Gregory C. Seymour, D.D.S.; Joseph R. Dular, Ed. S., LSW
Defendant's Experts: Not Listed

Norman v. AFP Distributors, Inc., et ai.

Type of Case: Auto v. Semi Tractor-Trailer
Settlement: $1,000,000 (Plaintiff Norman)
Plaintiff's Counsel: Andrew P. Krembs, Jaines J. Sartini
Defendant's Counsel: Robert J. Kent, Esq.
Court: Athens County Common Pleas, Judge L. Alan Goldsberry
Date: April, 1998
Insurance Company: Westfield Insurance
Damages: Wrongful Death

Summary: Plaintiff killed in head-on collision in which the Defendant, driving a 1988 International Tractor Bobtail, lost control and went left of center.

Plaintiff's Experts: Isaac Gabbard (Transport Safety); Camille B. Wortman, Ph.D. (Psychologist); John F. Burke, Jr., Ph.D. (Economist)
Defendant's Experts: Not Listed

Willie J. Wright v. Lake Erie Design, et al.

Type of Case: Employer Interntional Tort / Machine Product Liability
Settlement: $325,000
Plaintiff's Counsel: Richard C. Alkire, Andrew P. Krenibs, Dean Nieding
Defendant's Counsel: Dale Markworth, George Lutjen, Douglas Whipple, Patricia Poole
Court: Cuyahoga County Coininon Pleas, Judge Daniel O. Corrigan
Date: Septeinber, 1998

Insurance Company St Paul Fire and Marine Insurance Company: Insurance Company North America
Damages Left hand crush injury

Summary: Plaintiff's left hand became trapped between the mold halves of a ceramic molding machine when Plaintiff accidentally actuated the closed control button instead of the open button which he had intended to actuate. Plaintiff claimed that the employer modified the machine by defeating the operator safety gate and tn-o-hand dye opening control and that the product manufacturer failed to incorporate a technologically feasible design control circuit which would prohibit the tying down of a control button to allow for single button rather than two button control operation.

Plaintiff s Experts Simon Tamny. P E . Janet Blanchard. M D
Defendants Experts R E Ridenour (Technical Consultant)

Karen Divis, et al. v. Chabek, et al.

Type of Case Motor Vehicle Accident
Settlement $150.000
Plaintiff's Counsel Debra Dixon
Defendants Counsel Kerry Volsky . Les Chambers
Court Cuyahoga Count!
Date January. 1999
Insurance Company Withheld
Damages Traumatic cervical strain

Summary: Plaintiff was rear-ended by Defendant

Plaintiff's Experts: Daniel Leizman, M.D.
Defendant's Experts: Not Listed

Moses Cobbins v. J.A. McMahon, Inc.

Type of Case Intentional Tort
Settlement $401.000
Plaintiff's Counsel John Meros
Defendant s Counsel Kevin Murphy
Court Truinbull Count!.
Judge Peter Kontos
Date September 1999
Insurance Company Motorists Insurance Co
Damages: Left femur fracture, nerve damage from steel beam falling against leg.

Summary. Plaintiff, a laborer in Defendant's steel fabrication plant, was required to push a cart overloaded with steel beams along an uneven surface. Two co-workers and the foreman pushed the cart also. Only the Plaintiff was injured when the load shifted, and a beam fell, pinning Plaintiff against metal horse.

Plaintiff's Experts: G. Anthony Rago (Construction / Steel Fabrication Safety); Dr. Michael Jurenovich (Orthopedics)
Defendant's Experts: None

Gerzanics v. Nationwide Mutual Ins. Co.

Type of Case UIM Case for Crush Injury Caused by Bumper to Bumper Pedestrian v Car
Verdict $100.000
Plaintiff's Counsel Dale S Econoinus
Defendant's Counsel Mark Micheli
Court Cuyahoga County,
Judge Ralph A McAllister
Date Septeinbei. 1999
Insurance Company Nationwide Mutual Ins Co
Damages Meds $13.500; Lost wages $5.000

Summary: Plaintiff was a 39 year old female who was pinned between two vehicles causing injury to her knee. Plaintiff recovered money from the tort-feasor's policy and needed to make an UIM claim under her Nationwide policy.

Plaintiff's Experts: Dr. Michael LoPresti (Orthopedist); Dr. kchard Berkowitz (Podiatrist); Claudia Miller (Physical Therapist)
Defendant's Experts: None Listed

Stright , et al. v. Cincinnati Ins. Co.

Type of Case Wrongful Death / Survival Action
Settlement $1.250.000 (arbitration)
Plaintiff's Counsel Dale S Economus
Defendant's Counsel Keith Thomas
Court Portage Count! — Arb in Cleveland
Date November. 1999
Insurance Company Cincinnati Ins Co
Damages Meds $33.835 09. Funeral $7.729 04

Summary: Plaintiff's decedent was a 19 year old male involved in a devastating automobile accident on October 31, 1996. He was life-flighted to Metro General Hospital. He died on November 2, 1996. He is survived by his mother, Janet Potts, his father, David E. Stright, and his half-brother, Timothy Potts. The Plaintiff obtained the available policy liinits froin the tortfeasor and sought UIM coverage from Cincinnati Ins. Co. under a cominercial policy of liability/Um insurance written to M & M Welding in the ainount of $1,000,000 and Steel Supply Company in the amount of $500,000. After the Supreme Court of Ohio determined the case of *Scott Pontzer v. Liberty Mut. Fire Ins. Co.* (1999) Ohio St.3d ___, Cincinnati was bound to concede that the Plaintiffs and Plaintiffs' decedent were "insureds" under the Cincinnati Ins. policy described above which both contained provisions for binding arbitration under the circumstances.

Plaintiff's Experts: Dr. John Burke (Economist)
Defendant's Experts: Not Listed

Jane Doe v. Evangeline Franklin, M.D., et al.

Type of Case Medical Malpractice - Failure to Diagnose
Verdict $300,000
Plaintiff's Counsel David J Guidubaldi
Defendant's Counsel Mark O'Neill
Court Cuyahoga County Common Pleas, Judge Timothy McGinty
Date November, 1999
Insurance Company Ohio Insurance Guaranty Association
Damages Subaiachnoid hemorrhage with resulting damage

Szimmary: Plaintiff presented to urgent care center with complaints of headache and double vision. Defendant physicians failed to diagnose syinptoins of cerebral aneurysm. One and one-half years later the aneurysm ruptured into the subarachnoid case. Case settled against two Defendant physicians for $600,000. Case submitted for binding arbitration against third Defendant physician, with a decision in favor of Plaintiffs in the amount of $300,000, the Ohio Insurance Guaranty Association (OIGA) limits.

Plaintiff's Experts: John Little, M.d. (Neurosurgery); Samuel Kiehl, M.D. (Emergency Physician); Richard Litwin, Ph.D. (Neuropsychologist)
Defendant's Experts: David Preston, M.D. (Neurosurgery)

Kaffeman v. Maclin, et al.

Type of Case: Wrongful Death / Survivorship
Verdict: $1,883,750
Plaintiff's Counsel: Phillip A. Ciano
Defendant's Counsel: Larry Sutter, Ken Abbarno
Court Cuyahoga County, Judge Patricia Cleary
Date: November, 1999
Insurance Company: Self-insured to *$2,000,000* / excess = AIG
Damages: Medical/Specials: $1,400; Economic Loss: $150,000 — $300,000

Summary: Plaintiff's decedent was crushed and died of traumatic asphyxia when a Yellow Freight's driver dropped a 1500 pound compactor/baler atop Plaintiff's decedent during Defendant's attempted onloading of the compactor from his tractor/trailer using Plaintiff's decedent's fork lift.

Plaintiff's Experts: V. Paul Herbert (Training/ Packaging); Harvey Rosen, Ph.D. (Economist)
Defendant's Experts: None

June Pall v. Michael Lukasiewiecz, et al.

Type of Case: Underinsured Motorist
Verdict: $375,000
Plaintiff's Cozinsel: Mark R. Koberna, Rick Sonkin, Shale Sonkin
Dejendant's Counsel: James Glowacki, Jay L. Hansen
Court: Cuyahoga County Common Pleas, Judge Coyne
Dale: November, 1999
Inszirance Company: Employers Fire Ins. Co.
Damages: Fractured patella; aggravation of pre-existing osteoarthritis in both knees

Summary Tortfeasor turned left in front of Plaintiff at intersection. failing to yield right of way Tortfeasor's carrier tendered $100,000 per person limits, but Plaintiffs carrier nould not consent Trial proceeded on issues of liability, proximate cause and damages

Plaintiff's Experts Gregory Sarkisian, D O
Defendant's Experts None

Richard Gump, et al. v. Alliance Midwest Tubular Products

Type of Case Industrial Accident
Settlement $660,000
Plaintiff's Counsel Mark R Koberna, Rick D Sonken. Shale Sonkin
Defendant's Counsel Don Moracz
Court Stark County Common Pleas, Judge Liol
Date December, 1999
Insurance Company General Casualty
Damages Fractured vertebrae, herniated L5-S1 disc, herniated L2-L3 disc

Szimmary Plaintiff was standing on flatbed truck while Defendant's employee attempted to unload steel coil using a towmotor The towmotor drove into a depression in Defendant's unloading area as Defendant's employee attempted to unload, causing towmotor to hit steel coil Steel coil tipped over, landing on truck and causing Plaintiff to be catapulted off the truck Plaintiff landed on his back, fracturing his 12 vertabrae Plaintiff also suffered two herniated discs Plaintiff udnerwent three surgeries. the last of which involved the placement of BAK titanium cages at L5-S1 Plaintiff was permanently disabled from hisd job as a truck driver

Plaintiff's Experts John Conoiny, M D , John Burke, Jr . Ph D , Carolyn Wolfe, CRC, Vincent Gallagher (Safety Engineer)
Defendant's Experts David Smith, M D , Mark A Anderson. CRC

Sayers v. Grange Mutual Casualty Co.

Type of Case: Underinsured Motorist Claim
Verdict: $145.000 + $50,000 settlement froin tortfcasor — Total = $195.000
Plaintiff's Counsel: John R. Miraldi
Defendant's Counsel: Warren George
Court: Cuyahoga County, Judge Patricia Cleary
Date: October, 1999
Insurance Company: Grange
Damages: Medicals: $14,000; Lost Wages: $8,000

Summary: Plaintiff was a 27 year old carpenter. He suffered a herniated disc at L3-4 which required surgical repair. Liability was admitted. Property damage was $1,200. Grange offered $1,000 at final pre-trial and $11,000 on the eve of trial.

Plaintiff's Experts: Mario Sertich, M.D. (Neurosurgeon)
Defendant's Experts: None

Mabel Hammer, Executrix, etc. v. ABC Co.

Type of Case: Intentional Tort
Settlement: $1,000,000
Plaintrff's Counsel: Jeffrey H. Friedman, Joseph C. Damiano, Martin Delahunty, III
Defendant's Counsel: Withheld
Court: Stark County Common Pleas
Date: Not Listed
Insurance Company: Self-Insured
Damages: Death

Szimmary: Decedent was required by his employer to utilize an entrance also utilized by plant straddle carriers which the employer knew had large blind spots, preventing operators from seeing pedestrians. Decedent was struck and killed while exiting the plant,

Plaintrff's Experts: Richard Harkness (Engineering); Gerald Rennell (Safety); John Burke, Jr. (Economist)
Defendant's Experts: Not Listed

Jane Doe, Executrix v. ABC Hospital

Type of Case: Medical Malpractice
Settlement: $850,000
Plaintiff's Cozinsel: George E. Loucas, Francis E. Sweeney, Jr., Esq.
Defendant's Counsel: Withheld

Court Withheld
Date Withheld
Insurance Company Withheld
Damages Not Listed

Summary: Not Listed

Plaintiff's Experts: Liability admitted. No expert required.
Defendant's Experts: Not Listed

James Morrison v. Deborah L. Mack

Type of Case Rearend Auto Collision Involving Three Vehicles
Settlement $180.000
Plaintiff's Counsel Mitchell A Weisinan, Esq
Defendant's Counsel John Gannon
Court Cuyahoga County,
Judge Nancy A Fuerst
Date December, 1999
Insurance Company Cincinnati Insurance Co
Damages Soft tissue injuries including cervical strain nith ongoing pain and stiffness, disc herniation requiring surgery

Summary Plaintiff was the driver of the iniddle car in a three-vehicle rearend collision, with minor impact, only Passeiiger in Plaintiffs car, Defendant driver and driver of car in front of Plaintiffs were not injured, accident reconstructionist used by Plaintiff

Plaintiff's Experts: Henry Lipian (Accident Reconstructionist); Dr. Columbi (Neurosurgeon)
Defendant's Experts: Not Listed

Jane Doe v. Home Assistant, et al.

Type of Case: Fall / Negligent Caregiver
Settlement: $55,000
Plaintiff's Counsel: Mitchell A. Weisinan
Defendant's Cozinsel: Withheld
Court: Withheld
Date: December, 1999
Insurance Company: Withheld
Damages: Fractured left leg and bumps and bruises Surgery required to repair left leg.

Summary Home health caregiver left Plaintiff (former stroke victim with residual left-sided weakness) standing alone on an outdoor deck. Plaintiff fell onto the deck, sustaining a fractured left leg and other bruises. The leg fracture was surgically repaired. Recovery was only 3 months. Liability was not clear.

Plaintiff's Experts: Plaintiff's Treating Physicians
Defendant's Experts: None

Not Listed

Type of Case Wrongful Medication (Improper Filling of Prescription)
Settlement $25,000
Plaintlff's Counsel Mitchell A Weisman
Defendant's Counsel Withheld
Court Settled before put into suit
Date December, 1999
Insurance Company Withheld
Damages Overdose of haloperidol resulting in teinplory fatigue/lethargy; blurred vision, double vision, loss of appetite, restlessness, sweating/chills; headaches, drooling, breathing difficulties, joint stiffness/soreness

Summary. Pharmacy filled prescription incorrectly — increasing the doseage 10 tiines. The error was not discovered until Plaintiff had been talung the prescription for 27 days The symptoms (noted above) continued to increase/worsen The Pharmacist admitted the error and the symptoms gradually subsided

Plaintiff's Experts: None
Defendant's Experts: None

John Doe, et al. v. ABC Pharmacy, Inc.

Type of Case Wrongful Medication
Settlement $30,000
Plaintlff's Counsel Mitchell A Weisinan
Defendant's Counsel Withheld
Court Withheld
Date December, 1999
Insurance Company ABC Pharmacy, Inc — Self-Insured
Damages Emotional breakdown resulting in spousal assault and conteinplation of suicide, subsequent criininal charges

Summary: Plaintiff was diagnosed with bi-polar disorder and given Prozac. The medication was effective and he improved. His physician then increased his doseage froin 10 ing. to 20 mg. The Defendant pharmacy mistakenly filled his new prescription with Prilosec. Consequently, he unknowingly underwent an abrupt withdrawal froin Prozac and suffered a nervous breakdown with deleterious effects to his emotional health and family relationships. Plaintiff kept the pill container with the incorrect label on it. A police report documents his arrest for domestic violence.

Plaintiff's Experts: Plaintiff's treating physicians
Defendant's Experts: None

John Doe, etc. v. ABC Hospital, et al.

Type of Case Medical Malpractice
Settlement $250.000
Plaintiff's Counsel Richard J Berris
Defendants Counsel Withheld
Court Lorain Count! Common Pleas
Date November. 1999
Insurance Company Withheld
Damages Severe head trauma. including bruising of left face and ear. swelling of left eye. blood in cerebral spinal fluid and left facial paralysis Additionally, Plaintiffs head was severely molded and misshapen and cephalohematoina was present Seizures occurred twelve hours later

Summary Plaintiff alleged that the negligent management of his labor and deliver! (via forceps) resulted in the above injuries Despite his immediate transfer to a neonatal intensive care unit. he was left with the follon ing residual dainage Traumatic plagiocephal? (abnormal development of the skull) requii ing major resonstructive surgery . and structural brain dainage with accompany ing learning disabilities and emotional problems

Plaintiff's Experts: None
Defendant's Experts: Not Listed

John Doe v. ABC Corporation

Type of Case Employment Discrimination Based upon National Origin
Settlement $75,000
Plaintiff's Counsel Benjamin H Anderson
Defendant's Counsel Withheld
Court Withheld
Date September, 1999
Insurance Company ABC Corporation — Self-Insured
Damages Wrongful discharge, discrimination based upon national origin

Summary: Plaintiff moved to the United States in 1982 from the Middle East. He attended college courses in order to learn the English language and to begin working on a degree. Family obligations forced Plaintiff to go to work at ABC Corporation as an entry-level laborer. Within four years, Plaintiff had risen to plant foreman, and within two more years, plant supervisor. Co-workers and supervisors repeatedly used epithets such as "jew boy", "sand nigger", "camel jockey", and other slurs regarding his Middle Eastern descent. When the assistant plant manager position became open, Plaintiff was passed over for the job by a less-qualified, less-senior American employee. When Plaintiff complained, his job conditions were altered and numerous duties and tasks were taken from him. Ultimately, he was terminated for alleged theft of company property. Plaintiff claimed that the discharge for alleged theft was a pre-textual reason for Plaintiff's termination and was merely an extension of the years of discriminatory conduct against him.

Plaintiff's Experts John Burke. Ph D
Defendant's Experts. None

In Chambers

Judge Janet Burnside

Judge Janet Burnside graduated *cum laude* from the Ohio State University College of Law in 1977. From 1977-1978, she clerked for Judge Alvin I. Krenzler in the Eighth District Court of Appeals. Between 1978-1991, Judge Burnside gained extensive civil litigation experience while engaged in the general practice of law at Greene & Hennenberg. Judge Burnside has served as a judge in the General Division of the Cuyahoga County Court of Common Pleas from 1991 to the present. Judge Burnside recently co-edited the Ohio Rules of Evidence Trial Book (LEXIS Law Publishing, 1999) with Professors Louis A. Jacobs and Stephen **A.** Saltzburg.

Judge Burnside is a stickler on procedure and understands that many legal battles are won or lost on procedural grounds. She advises attorneys to be meticulous and pay more attention to detail. She cites to several examples of how attorneys can improve their practice:

1. Filing a Motion for Leave to File Amended Complaint:
Do not merely attach the amended complaint as an exhibit to the underlying motion and then ask the clerk to stamp that particular page. Instead, the amended complaint must be filed separately on the court's docket.

***2.** Adding a new party defendant:*
Add a new party defendant in accordance with Civ. R. 20. Do not add the new party defendant in a Motion for Leave to File an Amended Complaint. Be mindful that a motion to amend the complaint can be used to change the pleadings, not the parties.

3. Dismissing one of several defendants:
Do not merely file an amended complaint. Too many attorneys file an amended complaint with the notion that it is somehow "pasted over" the original complaint. A defendant omitted in the amended complaint is technically still a party to the suit until he is formally dismissed.

***4.** Be sure and file suit against the proper entity:*
For example, plaintiff sues a party under its commonly referred to name for the entity - John and Joe's Supermarket. In reality, John and Joe's Supermarket is a sole proprietorship owned by John Doe. In its answer, defendant raises the defense that it lacks the capacity to be sued. If plaintiff never moves to amend the complaint before trial, the judgment will not be valid.

Under Civ. R. 9(A), it is 'not necessary to aver the capacity of a party to sue or be sued . . . or [to aver] the legal existence of an organized association of persons that is made a party"'. Nevertheless, Judge Bumside notes that problems will arise if your opponent raises the defense of "lack of capacity to be sued" and you do nothing to correct that problem. Citing to *Patterson v. V&M Auto Body* (1992), *63* Ohio St.3d 573, she points out that "if this defense is raised and you ignore it, any judgment against that entity can be rendered void".

5. Never downplay the importance of your own case:
Judge Burnside is amazed at how often lawyers say things like "Ladies and gentlemen, this will not be the most exciting case". You just might as well just switch the light to off for the jury, says Judge Burnside. "How must your client feel sitting back there? Is this a Protestant ethic of modesty we are working on here? What the plaintiffs attorney should do instead is convey to the jury that this tiny piece of litigation will turn the course of history for all times".

6. Use simple language:
Avoid legal and medical jargon. Judge Burnside notes that "attorneys are speaking in what amounts to legal and medical jargon to a group of people who could just as easily give you their own jargon from their own occupations". For example, don't ask a witness "Dr., was that condition *secondary* to her broken arm?" Most of the jurors won't understand what secondary means. If an expert witness is speaking over the juror's heads, stop him. Ask him to explain what he is talking about in laymen's terms.

7. "Reasonable degree of medical certainty" is a legal standard to be determined by the court:

Judge Burnside offers a refreshing view on the overuse of this standard at trial. She suggests that lawyers stay away from this type of legalese with the jury. "Instead," according to Judge Burnside, "you inust simply be prepared to argue this standard if there is a inotion in limine or a challenge to your testifying expert". Judge Burnside takes the view that this standard "is a legal standard to be determined by the court and not by the jury". She notes:

"It is the same legal standard that is used to determine whether the jury should be instructed on permanent or future damages. It is a legal standard. The court is serving a gatekeeper function to see if the jury is going to get to hear that evidence and get those instructions. *It is not a standard to be applied by the trier of fact.* Why? Because the trier of facts' burden of proof is not 'to reasonable degree of medical certainty'; rather, it is 'by a preponderance of the evidence'. If we can all get thinking on that page, and I know we are miles froin that because of this local legal culture that has developed about the use of those terms, then your questioning of the experts can be greatly simplified. Instead of asking an expert an opinion to a reasonable degree of medical certainty, ask 'how certain are you of this doctor?' or something similar. Isn't this what you would ask another huinan being who is telling you what he thinks the future holds?".

(Editor's note: while Judge Burnside's suggestions are persuasive with a jury they may not persuade some of our inore conservative judges who still insist on the "magic words" to get your case to the jury.. You may instead ask the doctor at the start to give only those opinions which he holds with a reasonable degree of medical probability, instead of asking it in each question,)

8. Expedite trial procedures:

Streamline ***the*** presentation of your case. Our attention spans and expectation of how we receive inforination is more limited than it used to be. While jurors may have to be physically present at trial. don't be fooled into thinking their minds have to be present. It's your Job to keep their attention.

9. Consortium claims:

Take a good hard look at whether you want to take a consortium claim to the jury Consortium claims may give the jury the iinpression that you are overreaching Pursuing a consortium claim in a case where the damages do not warrant it might result in the physically injured plaintiff being shortchanged

10. Use storyboards to convey your case:

By the tiine a case gets to trial, the lawyers know far too many facts As a result, they often feel the need to tell the jury every fact about the case, regardless of how boring or mundane the fact may be The need to spoonfeed the facts to the jury often conflicts with the need to streamline the presentation of your case This is why storyboards are so effective "One of the best things about storyboards," according to Judge Burnside. "is that they force the lawyer to crystalize the case" They also allow the jury to process the information for themselves

11. Be more visual.

Judge Bumside emphasizes that jurors are good 'takers in' of visual information, but often miss information presented only verbally. "We have trials with words only because in the old days we didn't have any other way of doing it. So why are we still in the oral tradition? It doesn't make sense. It is inefficient and archaic". Judge Burnside believes in showing and telling through storyboards and other visual aids to deliver your message to the jury.

Judge Kathleen Ann Sutula

Judge Kathleen Ann Sutula graduated froin the Cleveland-Marshall College of Law in 1976 From 1976-1978. she clerked for Judge Robert B Krupansky in the United States District Court. Northern District of Ohio Between 1978-1980, Judge Sutula served as an Assistant Cuy ahoga County Prosecutor in that office's civil division For the next eleven years, she was an Assistant United States Attorney for the Northern District of Ohio She was awarded the United States Depai tment of Justice's Special Achievement Aw aid in 1983 and 1989 As an

Assistant United States Attorney, Judge Sutula was assigned as lead attorney in a variety of cases involving personal injuries. civil rights, employment discrimination, Medicare. social security and fraud She was appointed to an unexpired judicial term in the Cuyahoga County Court of Common Pleas on February 26, 1991 and was re-elected in 1994 to a full six-year term

1. Trial ***Notebooks***

To Judge Sutula, every case, no matter how large or sinall, should have a trial notebook. In preparing your trial notebook: she recommends beginning with the end in mind. After researching the law and summarizing the facts, the trial notebook should begin with an outline of the closing argument and jury instructions. Preparing a case in this "reverse order" will help the attorney focus on what must be proven to win the case.

2. *Demonstrative Evidence*

As repoited recently in the Wall Street Journal, "The days when lawyers could go to court with just a manila folder. a blackboard and chalk or a marker and a big drawing pad are gone " (See WSJ article, "For Some Lawyers' Presentations, Image is Eveiything", February 1. 2000) Judge Sutula suggests next drafting proposed stipulations of fact to present to your opponent All the facts needed to prove your case should be the subject of proposed stipulations Even if some of your proposed stipulations are rejected, Judge Sutula notes that "there are always exhibits and/or facts that can be stipulated to" If your opponent won't cooperate, you can always resort to Requests for Admissions under Civ R 36 Only after these steps are taken, should opening statements and witness summaries then be completed and added to the trial notebook

Judge Sutula also advocates more use of demonstrative evidence. "Demonstrative evidence, such as charts, bill summaries, and story boards, will greatly aid the jury in understanding why you are asking for a large verdict". She says that throwing numbers to the jury without the use of a chart or outline is very confusing and leaves them with nothing to rely on but their imperfect memory.

Judge Sutula notes that "the number one thing personal injury lawyers consistently do wrong is they use a *blackboard* to write down the amount of money they want on a case, or to show why the amount of money set forth is wrong" She insists that attorneys should avoid using a blackboard to summarize damages "Why would you use a blackboard that is going to be erased by your opponent as soon as it's his turn to speak?" Instead, you should use a 30 x 40 piece of cardboard or a pre-designed scoreboard to delineate and summarize the medical bills and all distinct categories of damages Judge Sutula notes further that while the jury is generally not entitled to take the blackboard with them into delibeiations, *most* courts will allow charts or story boards to be taken back into the jury room She notes that in many instances, when an attorney asks at the end of the trial to do just that, the other side does not even understand what is being asked, and the chart or scoreboard goes in before they even have time to object

She further says that if you have too many bills to put on the board, group them together. For example, group I - emergency room bills; group II - surgical procedures; group III - recovery and rehabilitation; group IV - lost wages, and so on. She also reminds us that demonstrative evidence can be summaries or charts as long as all of the underlying data relied on is admissible. (See Evid R. 1006).

Judge Sutula likewise advocates using demonstrative evidence in opening statement. "As long as your demonstrative evidence consists of blowups containing data that has already been stipulated to for authenticity or for which you cannot dream of any evidentiary objections to, plan on using it in opening", says Judge Sutula. She further notes that the use of demonstrative evidence in opening does not have to involve every aspect of the case. To the contrary, in many instances it may only demonstrate a small part of your case. "By using demonstrative evidence as early as the opening argument, you have already impressed the jury that you are the side who is going to help them understand what the case is about and what needs to be proven in the proceeding".

From a practical standpoint, Judge Sutula cautions trial attorneys to make certain that the demonstrative evidence

used at trial is large enough or close enough for the jury to see, She finds that many attorneys arrange it in a place where it can't be seen by all the jurors. To avoid this pitfall. she says "if it's so small that you have to put it right on the ledge in front of the jury. put it there". "Let the judge tell you that you cannot place it right in front of the jury". "Let the judge take the blame for putting it where the jury can't see it". The skilled trial attorney must find a way to divert the blame for the jury's inability to see the crucial evidence.

3. Maintaining Your Credibility With the Jury

Judge Sutula also believes most jurors think that lawyers hide things froin them Therefore. every moinent of the trial you want the jury to understand that you are the attorney that is going to tell thein the whole story. and not hide anything This will give you a step-up on credibility. and that credibility will naturally flow from you to your client

The skilled practitioner must also leave the jury with the impression that they are hearing all the evidence. According to Judge Sutula. attorneys who ask for too many side bars will never create this perception with jurors. Judge Sutula suggests that "if a piece of evidence is about to come into court that is crucial to or against your case. let the judge know up front out of the presence of the jury that it may be necessary to put your objection on the record". If this approach is taken, the judge will appreciate the courtesy you are showing. More importantly. the jury will not punish you and your client based on an erroneous perception that you are hiding facts froin them.

Judge Sutula also suggests that attorneys need to do a better job of listening to the witnesses' answers Judge Sutula finds that many lawyers are either too nervous or too preoccupied with the next question to listen to the actual answer Focus on the witness rather than yourself Think of it like a good conversation

Judge Sutula also warns that the lawyer who misstates a witness' answer. or rephrases it in an unfavorable manner. loses credibility with the jury. If you get stuck with a bad answer, move on to another subject matter where you can win some points. "Do not lose credibility by unilaterally altering the testimony of a witness. This only reinforces the jury's belief that attorneys obscure the truth".

Judge Sutula also says that the skilled practitioner must maintain the delicate balance between "being repetitious" enough to inake the jury remember key themes, while simultaneously preventing thein from discovering that the use of repetition is intentional.'. "In many instances," according to Judge Sutula, "if a jury learns that you are being repetitious, they think you are questioning their intelligence. If you become so repetitious that it is apparent to everyone in the courtroom, you have probably lost the case".

4. Final Argument

Judge Sutula offers the following pointers on closing arguments:

1. Be short and to the point, like a bullet point summary.
2. Do not feel like you have to use all your allotted time.
3. Be careful not to use undue repetition.
4. If your opponent violates this rule, point it out in rebuttal, something like this:

"Ladies and gentlemen, you heard at least a dozen times from John Doe's counsel throughout this trial that John was boy scout of the year last year. But you only heard once froin his counsel that he was drunk the night he hit Jane Smith. Why do you think you didn't hear about that fact a dozen times?".

5. Raising Objections

As a final practice pointer, Judge Sutula insists that all trial attorneys should have a laminated list of trial objections in front of them, along with the applicable Civil Rules and Rules of Evidence. She urges practitioners to keep this list with thein at trial table so that as you walk up to the bench, you can cite the rule and have a better chance of obtaining a favorable ruling.

CATA VERDICTS AND SETTLEMENTS

Case Caption: _____

Type of Case: _____

Verdict: _____ **Settlement:** _____

Counsel for Plaintiff(s): _____
Address: _____
Telephone: _____

Counsel for Defendant(s): _____

Court/Judge/Case No: _____

Date of Settlement/Verdict: _____

Insurance Company: _____

Damages: _____

Brief Summary of the Case: _____

_____

_____

_____

_____

Experts for Plaintiff(s): _____

_____

_____

Experts for Defendant(s): _____

_____

_____

RETURN FORM TO:

Romney B. Cullers, Esq.
Hermann, Cahn & Schneider
1301 East 9th Street, Suite 500
Cleveland, Ohio 44113
Phone: (216) 781-5515
Fax: (216) 781-1030

The Cleveland Academy of Trial Attorneys
"Access to Excellence"

The Cleveland Academy of Trial Attorneys is one of Ohio's premier trial lawyers organizations The Academy is dedicated to excellence in education and access to information that will assist members who represent plaintiffs in the areas of personal injury, medical malpractice and product liability law. Benefits of academy membership include **access to:**

1. **THE EXPERT REPORT, DEPOSITION BANK AND THE BRIEF BANK:**
   a huge collection of reports and depositions of experts routinely used by the defense bar, and detailed briefs concerning key issues encountered in the personal injury practice.

2. **THE ACADEMY NEWSLETTER:**
   published six times a year, contains summaries of significant unreported cases from the Cuyahoga County Court of Appeals Also contains recent verdict and settlement reports.

3. **LUNCHEON SEMINARS:**
   C L.E. accredited luncheon seminars, about six per year, includes presentations by experienced law yers, judges and expert witnesses on trial strategy and current litigation topics. These lunches also provide networking access with other lawyers, experts and judges.

4. **THE BERNARD FRIEDMAN LITIGATION SEMINAR:**
   this annual all day C.L.E. seminar has featured lecture styled presentations and mock trial demonstrations with a focus group jury. Guest speakers usually include a judge from the Ohio Supreme Court.

5. **ACADEMY SPONSORED SOCIAL AND CHARITABLE EVENTS:**
   these include the annual installation dinner, the golf outing, and the holiday no dinner dance which supports the hunger programs in Cuyahoga County. These events are routinely attended by members of the academy and judges from Cuyahoga County Common Pleas Court, the Eighth District Court of Appeals, U.S. District Court and the Ohio Supreme Court.

THE CLEVELAND ACADEMY OF TRIAL ATTORNEYS
Hoyt Block, Suite 300
700 West St. Clair Avenue
Cleveland, Ohio 441 13
Phone: (216) 771-5800
Fax: (216) 771-5844 or 771-5803
E-mail, CATA@lintonhirshman coin

"membership application on reverse"

Application for Membership

I hereby apply for membership in The Cleveland Academy of Trial Attorneys, pursuant to the invitation extended to me by the member of the Academy whose signature appears below, and submit the requested information in support of my application. I understand that my application must be seconded by a member of the Academy and approved by the President. If elected a member of the Academy, I agree to abide by its Constitution and By-Laws and *participate fully in the program of the Academy.* I certify that I possess the following qualifications for membership prescribed by the Constitution:

1. ***Skill, interest and ability in trial and appellate practice.***
2. ***Service rendered or a willingness to serve in promoting the best interests of the legal profession and the standards and techniques of trial practice.***
3. ***Excellent character and integrity of the highest order.***

In addition, I certify that no more that 25% of my practice and that of my firm's practice if I am not a sole practitioner, is devoted to personal injury litigation defense.

Name_____ Age:_____

Firm Name:_____

Office Address:_____ Phone no:_____

Home Address:_____ Phone no:_____

Spouse's Name:_____ No. of Children:_____

Schools Attended and Degrees (Give Dates):_____

_____

Professional Honors or Articles Written:_____

_____

Date of Admission to Ohio Bar:_____ Date of Commenced Practice:_____

Percentage of Cases Representing Claimants:_____

Do You Do 25% or More Personal Injury Defense:_____

Names of Partners, Associates and/or Office Associates (State Which):_____

_____

Membership in Legal Associations (Bar, Fraternity, Etc.):_____

_____

Date:_____ Applicant:_____

Invited:_____ Seconded By:_____

President's Approval:_____ Date:_____