Hon. William K. Thomas

PROFESSIONALISM

AWARD

NOMINATIONS NEEDED!

The CMBA requests nominations for the Hon. William K. Thomas Professionalism Award to honor a lawyer or judge who has significantly contributed to the enhancement of professionalism in the Greater Cleveland legal community by exemplifying the goals of the Ohio Supreme Court’s A Lawyer’s Creed and A Lawyer’s Aspirational Ideals and by furthering the ideals expressed in the Mission of the CMBA. The award will be presented at the CMBA’s Annual Meeting in June.

SUBMIT NOMINATIONS BY APRIL 15, 2016 TO:
Ethics and Professionalism Committee
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Cleveland, Ohio 44114
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DEPARTMENTS

04 FROM THE CMBA PRESIDENT
How Much For That Leg?! And Other Thoughts On What Money Can Buy
Anne Owings Ford

07 BAR SEEN
Photos from YLS Visit to Ronald McDonald House and New Lawyer Boot Camp

09 FROM THE EXECUTIVE DIRECTOR
A Time to Lead
Rebecca Ruppert McMahon

ON APPEALS
Tips for Writing a Powerful Reply Brief
David Mills

BOARD NOMINATIONS

CMBF
The Louis Stokes Scholars Program: Successfully Connecting the Pipeline from The 3Rs to Law School
Hugh E. McKay

YOUR CLE METRO BAR
Upcoming Events & Member Benefits and Promotions

10 D&O INSURANCE BASICS FOR THE BUSINESS ADVISOR
By Michael Brittain
K. James Sullivan

19 NEW RULES OF THE ROAD: HOW AUTO INSURANCE COVERAGE IS CHANGING TO MEET THE NEEDS OF THE APP-WIELDING RIDESHARE GENERATION
By Keven Drummond Eiber
Christopher G. Hawley

21 CURRENT COVERAGE ISSUES AND DISPUTES IN LONG-TAIL CLAIMS
By Richard Rezie

26 BRIDGING THE DISCONNECT BETWEEN TRANSACTION AND LITIGATION COUNSEL IN PLACING R&W INSURANCE
By Mark Andreini

34 TRAUMATIC BRAIN INJURY: WHAT ATTORNEYS NEED TO KNOW ABOUT ITS COMPLEXITIES AND CHALLENGES
By David M. Paris

29 WRAP-UP
Celebration for New Lawyers

30 ETHICS PERSPECTIVE
Ethical Obligations When Working With the Abruptly Unavailable Attorney
Kim Riley

36 JUDGES CORNER
Kimberly Davenport

26 THE SCOOP

06 SECTION/COMMITTEE SPOTLIGHT

28 NEW MEMBERS

39 CLE

41 CMBA CALENDARS

42 CLASSIFIEDS

46 BRIEFCASE

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How Much For That Leg? 
And Other Thoughts On What Money Can Buy 

Most non-experts (like me) today understand insurance to involve the monetization and spreading of risk of loss across a wider population, so that, should a specified loss occur, the individual will not bear the entire loss. The overall goal is to apply a fair monetary value to an event of loss, so that, at least in theory, the person suffering the loss is made whole.

The question of how to assign a dollar value to a non-monetary loss can be challenging. Actuaries and such folk have the unenviable task of setting monetary values for losses such as a left leg, which might result in payment of one sum, and the loss of three fingers on a non-dominant hand, which might result in payment of a different sum. For people like me, who are not gifted in this highly complex science, it feels a little like magic. Of course, there is no dollar amount that can actually compensate for the loss of a body part, a bodily function or a life, but the goal of insurance is to benefit all of us, helping those who suffer a loss to bounce back when disaster strikes.

Historically, the goal of insurance has been to predict and share risk, whether of commercial loss or of personal injury. Insurers have evolved from guarantors of one’s debts, in the event of one’s death, in Hammurabi’s day, through the development of underwriters at Lloyd’s coffee house in London, who spread the risk of loss from the ships plying the waters between the Old World and the New, to today’s hyper-accurate actuarial tables, reflecting the likelihood of a panoply of risks to a universe of insureds.

What interests me about insurance and related concepts is how they have affected the way we think about our world. Insurance, broadly speaking, is about the monetary value of events and experiences. The monetization of experience is increasingly being applied to ever more and different experiences; most recently, we are seeing it discussed in the context of higher education.

On one level, this drive to find monetary equivalence in higher education is fact-based and undeniable. Those who graduate from a four-year college degree program, over their lifetimes, on average will earn significantly more than those who graduate from high school and do not go on to college. But we are digging deeper and deeper into the question. The most recent discussion has been about the desirability of college students obtaining “marketable degrees,” such as accounting, engineering or chemistry, versus such apparently “non-marketable” degrees, such as philosophy, history and Italian Renaissance Poetry. I see practical, monetary value to many degrees; I see other kinds of value to many more.

Certainly, when I was in college in the early 1980s, the jokes about the value — or lack thereof — of a Liberal Arts degree (in my case, English Language and Literature) were already around. “To whom shall I serve the fries?” was offered, at the English Department’s expense. But back then, there were questions about other, more so-called practical degrees, too. I had a friend who received his Bachelor’s in Business Administration at the same time I received my BA, and I remember quizzing him about the value of that. Even then, we knew MBAs were making better wages than many others, but wouldn’t he be better off getting an undergraduate degree in Accounting, Economics or even Industrial Relations? He disagreed, and went happily off to a job in Texas after graduation, and I assume did just fine. I, of course, went to work for minimum wage at a campus bookstore until I started law school. Over time, things have improved for me.

Today, though, I hear far more than ever before about the “value” of certain degrees. Virtually every time the topic comes up, the issue on the table appears to be earning power, as in which degree leads to higher wages upon graduation. “Value” has become a singular term, meaning money.

But value is not solely a dollars and cents concept. We have debated the value of a Liberal Arts education for years, but this debate also has considered the educative, experiential and — dare I say it? — spiritual value of such studies. The value of a non-technical education to the student was a question that could be answered, in the end, only by the student himself or herself. To me, that is the value that matters.

Do not misunderstand: I decry the bamboozling of students by so-called educational institutions that do not provide meaningful value in exchange for exorbitant fees charged to students. I will never agree with the proposition that higher education is a business like any other business, such that the rules of caveat emptor should prevail. When that happens, the ivory tower indeed is tarnished.

The role of higher education in this country is to provide a safe place to question, to understand and to be inspired; to provoke the intellect of our people, and to continue to catapult American thought across the world. The price of access to such a place should be reasonable, based on what the institution must have to keep its doors open and fulfill its mission; ideally, students would have access to the institution without regard to ability to pay, at least in the present. Student loans are wonderful things, so long as all parties know what they are doing to their current and future selves.

Monetization, which is at the heart of insurance law today, is one way to value events, experiences or things, and it works well in commercial transactions. Monetization is not the best way to value everything, though, and we lose sight of that at our peril.

Anne Owings Ford has over 25 years’ experience in the world of litigation, from her first judicial clerkship to, most recently, her partner status at a national law firm. She has been a CMBA member since 1991. Anne currently is a litigation consultant, and she can be reached at aoford@roadrunner.com.
Krista Munger

Company: CMBA
Title: Administrative & Special Events Coordinator
College: Gannon University

**EAST SIDE OR WEST SIDE?**
East side for sure. It has great culture, great shopping, and amazing food spots you just can’t find anywhere else!

**TELL US ABOUT YOUR FAMILY.**
I have a wonderful older sister, Aleks. She got married in September 2014 to Dom, who is the perfect fit to our family and has really become a brother to me. They both adopted a dog, Bear, who is mix. My Mom, Benny, is the Hospice coordinator at Menorah Park and is exceptional at her job; I admire her strength and compassion. Bluto, she is a mutt with an overbite and tons of energy. My Dad, Kurt, is the sports fanatic who will take care of any job that the house needs; he is such a handyman. Then there is my boyfriend Andrew, who is the most kindhearted and determined man I have ever met. We have been together for the past four years, so he is basically part of the family.

**WHAT’S ON YOUR BUCKET LIST?**
Take a road trip out west to Colorado and the Rocky Mountains to ski and hike.

**WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?**
I was in Girl Scouts until I was a senior in high school.

Allison Kretz Verkhlin

Title: Equal Opportunity Specialist
College: University of Dayton
Law School: Case Western Reserve Univ. School of Law

**TELL US ABOUT YOUR PETS.**
We named our first cat Chairman Meow. So naturally when we adopted a second cat last fall from the Cleveland API, we researched female dictators’ names. Turns out, Mao Zedong really did have a fourth wife known as Madame Mao.

**WHY DID YOU JOIN THE CMBA?**
I joined after a colleague invited me to a Women in Law section meeting and recommended the Food for Thought experience. I now participate in a Food for Thought group and volunteer with The 3Rs and am enjoying meeting others in the profession in a fun and engaging way!

**WHERE DID YOU GO ON YOUR HONEYMOON?**
My husband and I spent two weeks out west. We flew to Phoenix then drove to Sedona, the Grand Canyon, Las Vegas, and LA. We then rode Amtrak 30+ hours up the coast to Portland. The Amtrak ride is something everyone should experience!

**WHO HAS INFLUENCED YOU THE MOST IN LIFE?**
I am always grateful for the colleagueship of the CMBA. In my position as an academic, I look to the greater legal community to keep up to date on developments in the profession. Friendly chatter at CLEs and luncheons has led me to great friendships. Any given week, I call on members of the CMBA and the Cleveland Association of Paralegals to make connections for our students and graduates. The CMBA is a network of top-notch legal professionals.

**WHAT ADVICE WOULD YOU GIVE TO A LAW STUDENT?**
Think about your priorities early in your career. Look around and see where you’d like to be in 10 or 20 years, find people who are there and ask them how they did it. Your career will ebb and flow; don’t forget about the things in life that are most important to you.

**WHAT DO YOU DO FOR FUN?**
I love being outside with my children, 9, 7 and 3 years old — especially at the beach. My husband and I are training for the Rite Aid 10K this year.

**WHO HAS INFLUENCED YOU THE MOST IN LIFE?**
My parents — they believed strongly in spending your time to help others. My four siblings and I are all in professions that work to make the world a better place.

Anne Murphy Brown

Company: Ursuline College
Title: Associate Professor & Director, Legal Studies Program; Campus Pre-Law Advisor
College: John Carroll University
Law School: University of Illinois College of Law

**WHAT DO YOU LOVE ABOUT YOUR JOB?**
I love working with students and seeing them achieve their goals. Our students are juggling careers, families and a challenging ABA-approved Legal Studies curriculum. At Ursuline, we work really hard to make sure that every student has the tools to be successful in the classroom and the profession. I also love hearing from our graduates!

**TELL US ABOUT YOUR PET.**
We adopted a four-year-old beagle-labrador mix from the Cuyahoga County Animal Shelter last year. Skippy has been such a gift to our family — loyal and lots of fun!

**WHY DID YOU JOIN THE CMBA?**
I am always grateful for the colleagueship of the CMBA. In my position as an academic, I look to the greater legal community to keep up to date on developments in the profession. Friendly chatter at CLEs and luncheons has led me to great friendships. Any given week, I call on members of the CMBA and the Cleveland Association of Paralegals to make connections for our students and graduates. The CMBA is a network of top-notch legal professionals.

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BAR ADMISSIONS COMMITTEE

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Staff Liaison
Carrie Cravener
cravener@clemetrobar.org

What is your goal?
The Committee exists to conduct confidential character and fitness investigations of applicants for the Ohio Bar Exam.

The goal is to ensure that every person who takes the Bar Exam has a record of conduct that justifies the trust of clients, adversaries, courts and others, and otherwise demonstrates the requisite character, fitness and qualifications for admission to the practice of law.

What can members expect?
Members of the committee perform a great service to the profession. The committee also provides opportunities to network with current and future members of the Bar.

Committee members are expected to participate in at least four investigations per year. Most investigations involve only a file review and brief interview. Each interview must be conducted by at least two committee members who have reviewed the applicant’s confidential Bar Admissions file, which contains extensive information regarding the applicant’s educational and work history, criminal record, and credit history. The purpose of the interview is to provide the applicant the opportunity to address any questionable conduct in the applicant’s history. Occasionally, a second interview or additional investigation is required. If, after interviewing an applicant, both committee members recommend against allowing the applicant to take the Ohio Bar exam, and the applicant appeals, those committee members will participate, as witnesses, in the appeal process.

Committee members must have been attorney members of the CMBA for at least three years.

YOUNG LAWYERS SECTION

Chairs
Nadeen Hayden, Chair
Alex Reich, Vice Chair

Regular Meeting
First Thursday of each month at noon

What is your goal?
To promote networking and career building for young lawyers.

What can members expect?
Authentic, non-intimidating, networking opportunities, and encouragement to give back to the community/participate in pro-bono activities.

Upcoming Events
Spring Cocktail Series at Velvet Tango Room, co-hosted by The Litigation Section. March 31st at 5:30 p.m.

Recent Event
Volunteering at Ronald McDonald House-Cooking Pancake Breakfast (See Bar Seen for pictures.)
YLS Visits Ronald McDonald House

YLS prepared breakfast for the 55 families staying at the Ronald McDonald House of Cleveland. YLS shopped for and donated the food and spent the morning cooking at the Ronald McDonald House kitchen. Any family whose child is receiving medical treatment at any Cleveland area hospital can stay there. No family is turned away for inability to pay.

New Lawyer Boot Camp

More than 30 new attorneys enrolled in the CMBA’s New Lawyer Bootcamp in early December. Over three days, our Bootcamp class learned the tricks of the trade from judges, attorneys and marketing experts. Special thanks to Bootcamp Chair Ian Friedman and Common Pleas Court Administrator Greg Popovich for their efforts in making this year’s Bootcamp a rousing success. If you are interested in joining the Bootcamp planning committee for 2016, please contact Samantha Pringle at springle@clemetrobar.org.
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A Time to Lead

As the frigid days of February settle in, I cannot help but think how smart migrating birds are. Yes, I love cold and snowy holidays in northern Ohio. Yes, I love to ski. Yes, I love cozy nights by the fireplace. But by February 1, I admit I am envious of the snow birds that have relocated to 80 degree weather. Notwithstanding my longing for a little southern exposure, there is no place I would rather be right now than at the CMBA. Lots of things are percolating. Fun things. Organization-changing things. Certainly more than enough to keep the winter doldrums at bay.

By the time this issue lands in mailboxes, our biggest and best party of the year — Rock the Foundation 11 happening on February 13 at the Music Box Supper Club — will have been a tremendous success. From the music and sumptuous food, to the cigar bar and the incredible, record-setting outpouring of support from more than 55 sponsors including our signature sponsor First Merit PrivateBank, I am confident the Foundation will have rocked it, all in support of the CMBA’s pro bono and community programs. And we will have celebrated two exemplars of leadership and service: Dick Pogue and Chris Connor. It takes a village to throw such a great party, but the volunteers that comprised our Rock 11 Committee this year — Stephanie Trudeau, Eric Goodman, Erica Jones, Ginger Makar, John Lebold, Chris Caspary, Rosanne Aumiller, Mark Avsec, Kevin Donahue, Pat Krebs, Tom Feher, Drew Parobek and Hugh McKay — have demonstrated a level of engagement that surpassed all expectations. We are profoundly grateful for their individual and collective leadership!

Also hot in February will be the debut of our new online presence. Over the past several months, under the leadership of Rita Klein, our Director of Marketing & PR, the CMBA has been hard at work building a new website. In addition to offering a more contemporary look and feel, the website will significantly improve the quality of our members’ experiences. From CLE and event registration, section and committee communications to membership renewal, and so much more, our new website will provide an interactive, customized experience for all. Additional details will follow as we approach our “go-live” date toward the end of the month.

February also marks the month in which our future bar leadership begins to take shape. Both the CMBA and the CMBF are accepting Board of Trustees nominations through February 29 and March 11 respectively for officer and trustee positions. (A complete listing of the open positions, as well as details for the nomination process can be found on page 14.)

With respect to the Association, our Code of Regulations charges us with responsibility to recruit individuals who, in the aggregate, represent the many groups that make up our membership. We are looking for diversity in the broadest respect: race, ethnicity, gender, practice areas, experience, affiliations, skills and interests. There is NO minimum age or years of practice requirement. The Nominating Committee, chaired this year by Common Pleas Judge Joan C. Synenberg, is looking for individuals with demonstrated records of commitment and service to the CMBA, and who are looking for a different kind of engagement.

Service on the CMBA Board not only offers individuals the opportunity to help shape the future of our organization, it also provides the chance to get to know people who share a passion for our bar. Plus, the CMBA affords trustees a close-up look at a variety of important issues that are affecting the legal profession. By way of example, at its January meeting, the CMBA Board considered whether:

- as proposed by the Mental Health & Wellness Committee, the CMBA should petition the Ohio Supreme Court to eliminate the bar application question which seeks disclosure of information if an applicant has “suffered from, been diagnosed with or been treated for” a mental health condition (the Board unanimously approved the request); and
- as recommended by the Court Rules Committee, the CMBA should formally endorse an amendment to Local Rule 21 governing case management and pretrial procedure so as to avoid uncertainty and unnecessary expense with regard to trial preparation when dispositive motions, including motions for summary judgment, are pending (the Board unanimously approved the request).

Similarly, service on the Foundation’s Board of Trustees provides opportunities to collaborate with diverse professionals while staying at the forefront of what is happening inside our bar. Different from the CMBA, the primary focus of the Foundation Board is on fundraising. Under the leadership of the CMBF Board, the Foundation raises critical dollars to support CMBA programs and initiatives that provide pro bono legal assistance and public law-related education throughout greater Cleveland. Foundation trustees actively support both the CMBA and the CMBF, and help making introductions and open doors on the behalf of both organizations. They also help plan some of the best events of the year, including Rock the Foundation, the Halloween Run for Justice and the Annual Public Servants luncheon.

If you have a passion for our bar and our community, please consider nominating yourself — or someone you know — for a leadership role within the CMBA or the CMBF. Forget flying south: come meet us at the bar!
Demonstrating fluency in business insurance concepts is one way that a business lawyer can set herself apart when angling to become a client’s trusted business counselor. This article aims to set business lawyers on the path of being conversant in the language of directors and officers (D&O) insurance.

THE PURPOSE OF D&O INSURANCE

What are the key liability risks faced by a company’s directors and officers?
- Breach of fiduciary duty claims (e.g., shareholder derivative suits, often related to alleged mismanagement, self-dealing, or M&A transactions)
- Securities law violation claims (e.g., securities fraud class actions)
- Federal and state regulatory investigations (e.g., by SEC or Department of Justice)
- Common-law claims brought by third parties (e.g., misrepresentation or tortious interference claims)
- Employment claims

Aren’t directors and officers indemnified for these types of risk?
Yes, the front line of liability protection usually is indemnification, which is statutorily authorized and usually embodied in corporate documents such as articles of incorporation and by-laws (generally both for defense costs and indemnity). Notably, corporate indemnification typically is unlimited and very broad.

Additional, a company’s articles of incorporation and by-laws often contain exculpatory provisions.

So why buy D&O insurance if the company already indemnifies its directors and officers?
Although a given company’s indemnification packages are usually broad, as a practical matter they are limited by the company’s financial resources, while insurance companies ordinarily have the financial strength to pay claims. Often the hour of need is precipitated by shaky financial ground, and comes during turbulent times for the company, so the company indemnification may be worth little actual value when needed.

D&O insurance can also fill gaps that might exist for corporate indemnification rights.
Also, D&O coverage provides a mechanism for a corporation to be reimbursed when it indemnifies its executives.
Lastly, having a robust D&O program attracts better outside directors, who expect the added protection provided by insurance companies.

What are the key functions of D&O insurance?
- To protect against legal defense expenses
- To protect against significant personal liability exposures
- As balance sheet protection for a company’s indemnification obligations to its directors and officers
- To protect private companies from various direct claims, and public companies from securities claims
- Although punitive damages are not covered by D&O policies governed by Ohio law, sometimes civil fines and penalties are covered.

What company personnel are covered by D&O coverage?
Officers, inside directors, outside directors, and members of the board of managers of an LLC ordinarily are insured.

Beware, often D&O policies do not cover non-officer in-house counsel, or else the coverage is narrowly fitted to certain functions performed by the individual in question, often excluding the traditional legal functions (which can be covered by employed lawyers professional liability policies).

Notably, insuring too many individuals can dilute the available limits, so companies should think carefully about who to include, and adjust limits accordingly.

D&O POLICY NUTS AND BOLTS

How is a D&O policy structured, and what are the basic protections it affords?
- Side-A coverage: provides coverage for individuals.
- Side-B coverage: provides reimbursement of a company’s indemnification obligations (allows a company to recover its indemnification obligations from an insurer).
- Side-C coverage: provides “entity or company coverage” for an entity’s own liability exposures (in the case of private
companies, this coverage tends to be broad, but for public companies this usually is limited just to the company’s liabilities for securities claims).

- Side-D coverage: more recently available, this provides coverage for shareholder derivative claim investigation expenses.

**What form of insurance is provided by D&O insurance: occurrence or claims-made?**

D&O policies are claims-made policies. This means they cover claims first made against an insured during the policy period (as opposed to occurrence policies, which require that the covered loss occur during the policy period). The policyholder must be sure to comply with its notice obligations under its D&O policy. As opposed to occurrence policies, for which late notice will not prevent coverage unless the carrier is prejudiced, under claims-made policies a carrier generally can deny coverage for late notice regardless of whether the carrier is prejudiced.

One trap for the unwary is that some policies are not just claims-made, but are claims-made-and-reported, which means that the claim must not only be made against the insured during the policy period, but must also be reported by the insured to the carrier in order for there to be coverage.

Another trap for the unwary is that the definition of “claim” tends to be broad in D&O policies, so a company cannot sit back and await a formal lawsuit or arbitration demand. Often an informal written demand — even by e-mail — is enough to trigger a reporting obligation.

**What is a “notice of circumstances” under a D&O policy?**

A pre-claim notice that puts the current carrier on the hook for coverage even if the formal claim is not made until after the policy period expires.

What is a “retroactive” or “continuity” date, and how does it impact coverage under a D&O policy?

If the wrongful acts underlying a claim happened before the retroactive/continuity date specified in a policy, then the claim will not be covered by the D&O policy even if it was first made against the policyholder during the policy period.

**What are some of the key exclusions under D&O policies?**

- Fraudulent or criminal conduct (although often coverage is provided until there is a final adjudication).
- Illegal profit or illegal advantage (same).
- Claims asserted by one insured against another insured under the same policy (this exclusion, which can often be restricted in scope, is used by insurers to prevent collusion).
- What is “non-rescindable” coverage?
- The insurer cannot rescind coverage based on alleged misrepresentations in the application. This is important because often the insureds are not the persons who prepared and submitted the insurance application.

**What is “severability”?**

It is policy language that states that the misconduct of “guilty” insureds (with respect to application misrepresentations, illegal conduct, fraud, etc.) will not be imputed to “innocent” insureds for purposes of coverage.

**What are some considerations when applying for D&O insurance?**

Consider the reputation of carriers in claims handling and their financial strength when buying policies, not just price and scope of coverage.

Be aware of the common-law duty of good faith that Ohio imposes on insurance companies.

Michael Brittain is a policyholder lawyer and co-chair of Calfee, Halter & Griswold LLP’s Insurance Recovery Practice Group. Mike was a founding member of the OSBA Insurance Law Specialization Board, and is past president of the CMBA. He has been a member since 1980. He can be reached at (216) 622-8508 or mbrittain@calfee.com.

**DEALING WITH A CLAIM THAT IS COVERED BY D&O INSURANCE**

**What are steps that can be taken to recognize a claim that might potentially be covered?**

Educate all officers, directors, risk managers, and legal department personnel on the basic coverages (enlist a broker or coverage lawyer to do this).

Have a corporate culture where open disclosure is favored, and help officers and directors understand that ignoring or hiding problems will not only make it politically worse, but could jeopardize D&O coverage.

Make sure outside counsel, including business advisors and litigators, are consulting with an insurance coverage lawyer early and often, because minefields abound in the claims process.

Does a reservation of rights letter sent by the insurance company require a response?

Yes, the insured should respond, even if simply to express a general disagreement with the attempted reservation of rights. It is prudent to consider hiring a lawyer with specialized insurance coverage knowledge to evaluate and respond to reservation of rights letters.

**What are some of the most common reasons for the denial of coverage by a D&O carrier?**

- Late notice
- Applicability of exclusions
- Failure to obtain consent before incurring defense costs or settlement payments
- Misrepresentation in the application

**What are some of the important issues that a policyholder should consider when dealing with a claim being covered by a D&O carrier?**

Continue to monitor developing facts for new or evolved claims that may be covered (or not covered).

Be familiar with and fulfill any obligation to cooperate.

Be familiar with and fulfill any obligation to obtain the carrier’s consent before taking certain actions, such as settling the underlying claim.

Be aware of the common-law duty of good faith that Ohio imposes on insurance companies.

K. James Sullivan is a policyholder lawyer and co-chair of Calfee, Halter & Griswold LLP’s Insurance Recovery Practice Group. James is an OSBA Certified Insurance Law Specialist, and is currently serving as Chair of the CMBA’s Insurance Law Section. He has been a member since 2004. He can be reached at (216) 622-8567 or kjsullivan@calfee.com.
Tips for Writing a Powerful Reply Brief

“You Lie!”
– Every Litigator Since the Dawn of Civilization When Reading the Opposition’s Brief

We’ve just read the opposition brief in our big case. Now we are considering drafting our reply brief without including the four-letter words that recently echoed from our office walls.

How do we start? We need to envision the readers — the judge and the judge’s law clerk.

As a threshold matter, this reveals that the reply is effectively mandatory (even if the rules say it is optional). I recall numerous times as a law clerk when the opening brief had persuasive value and had me thinking perhaps its position should prevail. Then I would read the opposition brief, which would swing me back the other way. Frequently, upon finishing the opposition brief, I was sitting at my desk thinking along these lines: “Well, if that’s all true, it certainly negates much or all of what was said in the opening brief; so, unless the reply can explain this, it’s hard to see how the opening brief’s position can prevail.” And then I would eagerly reach for the reply brief in the file (this is in the “B.i. era” — Before iPad). In some cases, it wasn’t even there — because it was never written. The silence in these situations is deafening. (And even if the opposition brief appears so poor that no reply would be needed, imagine how strong it would be to submit reply brief that is just a few sentences long, stating why that is so.)

So we are definitely going to submit a reply brief. Here are a few tips to make this critical brief as effective as possible, keeping the reader’s perspective constantly at the forefront:

Emphasize key concessions, but also look at what the opposition did not say.

This is a basic point that is easily overlooked. We tend to be good at noticing where the opposition has conceded a point helpful to us, but sometimes we don’t realize that the opposition has side-stepped one of our strong points without mentioning it. This often occurs because we are focusing solely on the opposition brief that is hot off the presses. Stop yourself and read your own brief again in full (as if you are the judge or law clerk) and then read the opposition. Focus like a hawk on places where it fails to respond to your points — this silence will be the basis for some of your most powerful points in your reply.

Quote the other side’s overstatement or hyperbole.
Sometimes the other side will take the “You Lie!” approach and spend a lot of time writing about how “ludicrous” or “ridiculous” or “offensive” your points are. Now, assuming your points are actually based in fact and sound argument, you have a chance to take the calmer high road here. One effective way to do this is to simply collect all of these exaggerated phrases and terms and place them into your reply, revealing that the other side is going off of emotion while you are going off of facts and law.

An example: “The other side appears very upset, remarking that our arguments are ‘lies,’ ‘ridiculous,’ and ‘not worthy of this honorable court.’ But this overblown rhetoric simply masks the reality that our arguments are based in undisputed facts and governing case law…”

See how one side starts to sound a little bit like they are just yelling while the other is calmly yet forcefully making the logical points? Always remember: The reply is not written for the other side; it’s written for the court.

Take out the straw man or confusion that the other side has created.
Sometimes we run into an opposition brief that doesn’t prompt the “You Lie!” response — instead, it causes the “What the?? What are they even talking about?” response. These are the briefs where you think to yourself, as Daily Show regular Lewis Black would say, there is not enough deodorant for the conversation. These briefs typically distort a fundamental legal premise underlying your entire case and take it so far off its moorings that it can be hard to figure out how to respond point by point, as a standard reply would. In these situations, I recommend starting with a preliminary section that explains how this fundamental point is being misrepresented or misunderstood. This might be written somewhat in the style of a legal treatise — to educate the reader on the proper legal framework and get everyone on the same page (minus your perspiration-inducing opposition, perhaps). Once you have set out the proper framework, you can easily reveal how the other side has distorted it, and then you can quickly show point-by-point how the opponent’s mistaken framework actually has no impact on your points (or even bolsters them).

Use these techniques for a powerful but short introduction.
The reader is likely first opening the reply brief with one or two main questions in mind that need answering. Do not disappoint: Give them the answers in an introduction on the first page. And consider the tips above to see if there is a particularly strong way to do so. Finally, see if you can do this introduction in less than one page — the reader won’t need much deodorant for that conversation.

David Mills is a federal appellate lawyer. He has argued at the U.S. Supreme Court, obtaining a 9–0 decision in Ortiz v. Jordan. He formerly served as law clerk to the current Chief Judge of the Sixth Circuit, R. Guy Cole, Jr. More information is available at www.MillsFederalAppeals.com. Most importantly, his self-drawn legal cartoons (Courtoons) are still up at www.courtoons.net. He has been a CMBA member since 2002. He can be reached at (216) 929-4747 or dm@MillsFederalAppeals.com.
In Honor and Remembrance of the Lawyers and Judges of Cleveland and Cuyahoga County who passed away between January 1 – December 31, 2015

Monday, April 4th at Noon
in the atrium of the Howard M. Metzenbaum U.S. Courthouse

A memorial program will be held for the following members of the bench and bar who passed away over the past year. Family, friends, colleagues and all lawyers in the Cleveland and Cuyahoga County area are invited to share in this final tribute to honor these men and women.

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Congressman Louis M. Stokes
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For more information, please contact Krista Munger at (216) 696-3525 ext. 2224 or kmunger@clemetrobar.org. The CMBA has made every effort to compile a complete list of the attorneys and judges in Cuyahoga County who have passed away over the past year. If you are aware of a name that has been omitted from this list, please contact Krista Munger.
Members of the Cleveland Metropolitan Bar Association are invited to submit their recommendations or to apply directly for the office of vice president, as well as for at-large positions on the Association’s Board of Trustees. This nominating process is open to all Cleveland Metropolitan Bar Association members. If a member knows someone who would be a strong candidate for one of the positions listed below, please submit that person’s name with his or her consent. The following terms apply for these positions:

**VICE PRESIDENT** will serve one year as vice president before advancing for one year to president-elect and then president.

**BOARD OF TRUSTEES** six member lawyers will each serve a three-year term as members of the CMBA Board.

The Nominating Committee will accept nominations by letter or e-mail and at two (2) meetings of membership on Friday, February 12 and Friday, February 19 from 12–3 p.m. at the CMBA Conference Center, 1375 East Ninth St., Floor 2, Cleveland, Ohio 44114. All nominations should include the resume of the nominee, and letters of reference.

The primary qualification for nominees will be their record of commitment and service to the CMBA. Those who are chosen to fill these positions will have been actively involved in committees, sections, bar programs, or other bar initiatives.

**All nominations and applications are due by 5 p.m. on Monday, February 29, 2016.**

Nominations or applications should be sent to:

Cleveland Metropolitan Bar Association Nominating Committee
1375 East 9th St., Floor 2, Cleveland, Ohio 44114

E-mail to rmcmahon@clemetrobar.org
The Cleveland Metropolitan Bar Foundation (CMBF), the charitable arm of the Cleveland Metropolitan Bar Association (CMBA), is seeking leaders who are interested in contributing service to the important fundraising activities that benefit our award-winning pro bono and community service programs making a difference in our community.

Members of the CMBA are invited to submit nominations or to apply directly for the positions of Vice President and Trustee of the CMBF as described below. Pursuant to Article I of the Code of Regulations of the Foundation, applications are reviewed by the Governance & Nominating Committee of the CMBF, which then makes recommendations to the Foundation Board of Trustees. Foundation Board Trustees are then elected by the CMBA Board of Trustees.

**VICE PRESIDENT** shall serve one year as vice president before automatically advancing to president of the Foundation. Term of office for vice president begins June 2016.

**VICE PRESIDENT OF ENDOWMENT** shall serve a one-year term, beginning June 2016.

**VICE PRESIDENT OF SPECIAL EVENTS** shall serve a one-year term, beginning June 2016.

**TRUSTEE** the term of office of elected trustees is two fiscal years. Elected trustees may serve three consecutive two year terms.

**COMMUNITY TRUSTEE** may be individuals who are not practicing attorneys. The term of office of community trustees is two fiscal years. Elected community trustees may serve three consecutive terms.

The primary consideration in reviewing nominees are demonstrated fundraising ability and service to the Association and Foundation, especially the community outreach programs of the Association and/or service to other non profit organizations.

All nominations and applications are due by 5 p.m. on Friday, March 11, 2016.

Inquiries, nominations or applications should be sent to:

Cleveland Metropolitan Bar Foundation
Governance and Nominating Committee
1375 East 9th St., Floor 2, Cleveland, Ohio 44114

E-mail to rmcmcahon@clemetrobar.org
Hugh E. McKay

The Louis Stokes Scholars Program
Successfully Connecting the Pipeline from The 3Rs to Law School

Your support of the Cleveland Metropolitan Bar Foundation (CMBF) has a direct and significant positive impact on our community. Programs funded by the CMBF include The 3Rs, The Louis Stokes Scholars Program, High School Mock Trial Competitions, Homeless Legal Assistance Program and Volunteer Lawyers for the Arts. All of these programs effectively connect directly with individuals to improve their lives, their futures, and the future of our profession and our community. With thanks to Mary Groth’s input and analysis, I will focus here on the Louis Stokes Scholars Program. 2016 marks the 5th year for the CMBA’s Louis Stokes Scholars Program, a diversity pipeline initiative supported by the CMBF through program grants and by additional individual and organizational donors and outside grants. The program is designed for college students who are graduates of our 3Rs program high schools in the Cleveland Metropolitan School District and Shaw High School in East Cleveland and who are interested in pursuing careers in the law. The overwhelming majority of Stokes Scholars are first generation college students. The mentoring and resources provided through this program help make a positive difference in their transition to and through college and beyond — to law school or other graduate programs and careers. The program has an Advisory Committee, co-chaired by Paul Smith of Bonezzi, Switzer, Polito & Huff Co. LPA and Ashley Edwards of AECOM Corporation.

The Stokes Scholars program is highly competitive and requires annual applications and interviews. The internship program requires a commitment of 20 hours per week, and Scholars participate in work projects at their internship site along with a rigorous schedule of tailored group experiences — field trips, writing and public speaking seminars, lunch and learn programs, social networking and other enrichment activities. Scholars have the opportunity to learn about the law and justice system in an “up close and personal” way, make connections with mentors and peers, and access information and resources to help them prepare for the LSAT and law school admissions. “Once a Scholar, always a Scholar” applies as we keep in touch with all program participants and conduct alumni activities to continue their engagement.

Our Numbers So Far: In its first four years, there have been a total of 138 applicants with a total of 50 Scholars selected. The selected Scholars represent 18 colleges and universities, and 13 CMSD high schools along with Shaw High School. Of the 50 Scholars, 48 participated in The 3Rs, 46 participated in the CMBA’s high school mock trial programs, and 47 are first generation college students. So far, five Scholars have been admitted to law school, with two currently enrolled. There are another nine Scholars applying for law school admission in 2016, and seven more who have indicated they will apply in 2017.

2015 Supporters: Last year, there were 17 internships hosted by the following: McDonald Hopkins LLP, Thompson Hine LLP, Tucker Ellis LLP, Squire Patton Boggs (US) LLP, U.S. District Court, Court of Common Pleas, Domestic Relations Court, Probate Court, Juvenile Court GAL Program, Cleveland Municipal Court, Cuyahoga County Prosecutor’s Office, the Legal Aid Society of Cleveland, and the CMBA. The participating law firms paid for the internship stipends ($1,800) of those placed at the firms. Stipends for those in the courts and legal non profits are provided through the CMBF and other donations. Along with the CMBF, program supporters in 2015 were Squire Patton Boggs (US) LLP, U.S. District Court Attorney Admissions Fund, Norman S. Minor Bar Association, Ohio State Bar Foundation, Carter Strang, and Louise Dempsey.

Highlights: The program was recognized last year as the “Outstanding Program of the Year” by the Ohio State Bar Foundation and was featured as a “best practice” diversity pipeline program at the midyear and annual meetings of the National Association of Bar Executives and National Conference of Bar Foundations. We produced a video about the program featuring the testimonials of three Scholars and added new field trips and group experiences, including a Trolley Tour of Cleveland for Scholars to better know their community and a visit to the Supreme Court of Ohio to hear oral arguments and tour the education center. To view the video and to learn more about the program visit our website at CleMetroBar.org/DiversityInclusion.

Ways You Can Get Involved in 2016: We are seeking program support in a number of ways. First, we would like to increase the number of firms and corporate legal offices involved in hosting interns. Next, we are seeking mentors and speakers for summer group experiences. We are also seeking additional sponsorships and donations to help underwrite the direct costs of the program — from supporting stipends for court and legal non profit placements to defraying the costs of field trips and helping us develop more resources to help Scholars prepare for the LSAT.

To learn more, get involved, make a donation, please contact Mary Groth at mgroth@clemetrobar.org or (216) 696-3525 x5004.

CMBF President Hugh McKay is the former President of the CMBA, founder of The 3Rs program, and is Partner-in-Charge of the Cleveland office of Porter Wright. He has been a CMBA member since 1982. He can be reached at (216) 443-2580 or hmckay@porterwright.com.
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New Rules of the Road
How Auto Insurance Coverage is Changing To Meet the Needs of the App-Wielding Rideshare Generation

BY KEVEN DRUMMOND EIBER & CHRISTOPHER G. HAWLEY

Americans have had a long love-affair with the automobile and most of us own or lease the cars we drive and are reasonably familiar with traditional auto insurance coverages, which largely are dictated by state laws. Typically, our personal auto policies provide third-party liability coverage in the event we cause property damage or bodily injury to others, provide first-party collision coverage in the event we suffer property damage to our own car, and provide uninsured/underinsured motorists coverage which protects us when we suffer property damage or bodily injury due to the fault of another who may have no insurance or inadequate insurance. Taxi companies and other businesses purchase similar insurance for their vehicles and employee drivers in the form of commercial auto policies.

Today, however, it is increasingly likely that the ordinary car behind you is a rideshare — a privately owned car whose owner/driver has been matched with a rider via an app on their mobile devices. (Two such Transportation Network Companies, or TNCs, providing this service are Uber and Lyft.) In the unfortunate event that driver rear-ends you at the next light, will there be insurance to cover your injuries? The Uber or Lyft driver's passenger's injuries? The driver's injuries? The damage to the two cars?

Until recently, coverage in such situations was uncertain, at best. Virtually all personal auto policies have an exclusion for business use of the car, including using it for transporting passengers for hire or for delivery services. Uber, for a long time, resisted providing commercial auto coverage for its drivers, many of whom worked only part time and many of whom worked for multiple ride-share companies at the same time. The question of coverage was further complicated by the nature of the ride-share business itself, where drivers may have logged into the company's app but have not yet been matched with a rider, may be matched to a rider but are still enroute to pick up the rider, or may actually have a rider in the car.

California, followed in short order by Colorado, first addressed the issues in 2014.
with legislation mandating that TNCs provide certain levels of insurance coverage for their drivers. Since then, the auto insurance and transportation network industries have worked together to develop compromise model legislation intended to require appropriate auto insurance for TNC drivers, clarify auto insurance requirements, and eliminate driver and consumer confusion, all without quashing the entrepreneurial nature of TNCs or the market for new insurance products. Currently, 27 states and the District of Columbia have enacted Transportation Network Company insurance laws in some form. Ohio, along with many other states, enacted HB 237 on December 22, 2015.

The TNC Insurance Compromise Model Bill (March 26, 2015) requires that drivers have state mandated coverage, which typically includes liability and may include UM/UIM coverage, at all times while logged onto the TNC’s digital network. For the period of time when the driver is logged onto the network but is not engaged in a prearranged ride, the driver is required to have primary liability insurance in the default amount of $50,000 per person for bodily injury, $100,000 per incident for bodily injury, and $25,000 for property damage. Individual state laws may specify higher limits. The default limit requirements increase for the period of time when the driver is engaged in a prearranged ride. This period begins when a driver accepts a ride requested by a rider through the digital network, even if the rider has not yet been picked up, and ends when the rider departs the vehicle. For this period, the driver is required to have primary insurance in the amount of $1,000,000 for both bodily injury and property damage. Again, individual state laws may specify a higher limit, although none have. In any event, the good news for passengers is that $1,000,000 is considerably higher than most state requirements for personal auto policies.

These insurance requirements may be satisfied either by the TNC’s insurance or by the driver’s own insurance, but if the driver does not have the required insurance, the TNC shall provide the required coverage. Further, the insurance maintained by the TNC cannot be conditioned on the driver’s insurance company first denying a claim. Lyft’s policy for the period October 1, 2015 to October 1, 2016, issued by Steadfast Insurance Company, provides the limits specified in the model legislation. Uber’s policy for the period March 1, 2015 to March 1, 2016, issued by James River Casualty Company, also provides the limits specified in the model legislation.

The model law requires the TNC to disclose its insurance coverage in writing to its drivers and to advise them that their own insurance may not provide coverage. The model law also permits insurance companies that write auto insurance to exclude coverage for their policyholders while they are logged onto a TNC digital network. And, the model law provides a right of contribution among multiple insurers that provide auto insurance to the same driver in satisfaction of these requirements, which is important because at least one study has shown that many drivers were not familiar with the TNC’s insurance for rideshare drivers available with premiums that are significantly less expensive than for traditional personal auto policies. Such policies are being offered by GEICO (in Ohio), Progressive (in Pennsylvania), Erie, Farmers, USAA, Allstate and others. Insurers offering coverage for rideshare drivers are taking different approaches to providing coverage, including some that simply eliminate the “business use” exclusion, some that are written like commercial auto policies, and some that are written to specifically fill the gap in coverage for when the rideshare driver is logged on but does not have a passenger.

Even recently, according to the same Josh Waldrum study cited above, 72% of drivers were not familiar with the TNC’s insurance coverage, and 92% did not tell their own insurance company about the fact that they were a rideshare driver.1 These auto insurance developments should help clarify the insurance issues for ridesharing drivers and passengers. Stay tuned for further insurance adventures in the future of self-driving cars.

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1 According to at least one, probably statistically unreliable, study performed by Josh Waldrum, who gave up his car and only used Uber and Lyft for one month, 40% of Uber drivers also Lyft and 76% of Lyft drivers also Uber, with 58% of all drivers logged onto both digital networks as they cruise for riders. See, https://www.thezebra.com/insurance-news/848/uber-vs-lyft/.


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Keven Drummond Eiber is a Partner at Brouse McDowell, where she focuses her practice on commercial insurance recovery for policyholder clients, insurance coverage litigation and general business litigation. Keven is admitted to practice in Ohio, Maryland, Florida and the District of Columbia and in many federal jurisdictions. She has been a CMBA member since 1991. She can be reached at (216) 830-6830 or keiber@brouse.com.

Christopher G. Hawley is an Associate at Brouse McDowell and is a member of the firm’s insurance recovery practice group. He joined the CMBA in 2015. He can be reached at (216) 830-6830 or CHawley@brouse.com.
Current Coverage Issues and Disputes in Long-Tail Claims

BY RICHARD REZIE

Long-tail claims arise when losses caused by the same general conduct of an insured are incurred over a long period of time. The most common examples are asbestos liability claims against manufacturers, distributors, or users of asbestos containing products, and environmental contamination claims where the original release of the claimed pollutant may have been many decades ago and may have continued over a period of many years. A practitioner faced with such claims either on the insurer or the policyholder side must grapple with many issues; among them are the unresolved issues presented below.

Generally, a large corporate insured will have many decades of insurance policies with layered coverages of primary, umbrella, and then excess policies issued by many different insurers. The overall coverage provided will often be at a lower level in earlier years and slowly increase into, potentially, hundreds of millions of dollars in later years. Thus, the first issue presented is to determine which policies may provide coverage. Ohio law is not settled on that point. There are various competing theories, and combinations of theories, as to which policies are “triggered” to provide coverage for a continuing loss: (1) under “continuous trigger,” all policies from first exposure to the end of the loss provide coverage; (2) under “exposure trigger,” only the policies in effect at the time of the original exposure or release must provide coverage; (3) under the “manifestation trigger,” only the policies in effect on the date that the loss is discovered provide coverage; and (4) under the “injury-in-fact trigger,” only the policies in effect on the date that the original exposure or release causes damage, regardless of whether that damage is noted, provide coverage.

The first issue presented is to determine which policies may provide coverage.

The next step is generally to determine which insurance policies (and insurers) have a current obligation to cover the loss.

Even after determining coverage, settling such long-tail exposures is a potential minefield revolving around the effect of a settlement on insureds because it provides the potential for coverage under the greatest number of years and insurance policies.

No Ohio appellate court has expressly determined Ohio law on trigger in the context of long-tail claims. Gencorp, Inc., 104 F. Supp. 2d 740, 745 (N.D. Ohio 2000). Continuous trigger is generally considered most beneficial to insureds because it provides the potential for coverage under the greatest number of years and insurance policies.

Gencorp, Inc. v. AIU Ins. Co., 104 F. Supp. 2d 740, 745 (N.D. Ohio 2000). Continuous trigger was not actually analyzed or decided. Id. ¶ 6. The issue of trigger, however, was not settled on that point. There are various competing theories, and combinations of theories, as to which policies are “triggered” to provide coverage. (1) under “continuous trigger,” all policies from first exposure to the end of the loss provide coverage; (2) under “exposure trigger,” only the policies in effect at the time of the original exposure or release must provide coverage; (3) under the “manifestation trigger,” only the policies in effect on the date that the loss is discovered provide coverage; and (4) under the “injury-in-fact trigger,” only the policies in effect on the date that the original exposure or release causes damage, regardless of whether that damage is noted, provide coverage.

Moving on from the issue of which policies are triggered, the next step is generally to determine which insurance policies (and insurers) have a current obligation to cover the loss. This is often a key complicating issue because, with long-tail claims, an insured may have many policies over a multi-year period with layers of primary, then umbrella, and then excess coverage provided by various insurers. Where the insurance policy promises to provide coverage for “all sums” the insured becomes liable to pay during the coverage period, Ohio has adopted the “all sums” pick-and-choose method of allocation. Goodyear, 95 Ohio St. 3d 512; Pa. Gen. Ins. Co. v. Park-Ohio Indus., 126 Ohio St. 3d 98 (2010). Thus, if the policies promise to cover “all sums,” as they often do, the insured can allocate the entire loss to any one primary policy. If that primary policy is exhausted, then the coverage flows vertically upwards through the umbrella policy above the primary policy, and any excess coverages above that. In that way, an insured may allocate the loss to one coverage tower (one primary policy with the umbrella and excess coverages above it). That is termed “vertical” allocation. “Horizontal” allocation is when the loss is allocated across all triggered primary policies equally until they are exhausted, and then all the umbrella policies above them, etc.

If an insured chooses to allocate vertically to one primary policy period, those insurers “targeted” to provide coverage may seek contribution from the other “non-targeted” insurers in other policy periods which were triggered but who have not been requested to respond to the loss by the insured. See Pa. Gen., 126 Ohio St. 3d 98, paragraph one of the syllabus. Thus, in theory, the end result should be the same as if the insured had allocated the loss horizontally. However, if the insured through agreement or otherwise allocates the losses horizontally, the insured may have waived the right to later allocate the entire loss to one targeted tower of coverage.

214 (Lucas C.P. 1995); see, also, Gencorp, Inc., 104 F. Supp. 2d at 746 (applying “continuous trigger rule that employs injury-in-fact as the initial triggering event”). To date, insurers have generally avoided litigating the issue. For instance, in Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co., 95 Ohio St. 3d 512, 2002-Ohio-2842, the court assumed a continuous trigger because “there is no dispute that there was continuous pollution across multiple periods that gave rise to occurrences and claims to which these policies apply.” 2002-Ohio-2848, ¶ 6. The issue of trigger, however, was not actually analyzed or decided. Id.
See, e.g., GenCorp, Inc v. AIU Ins. Co., 138 Fed. Appx. 732, 2005 U.S. App. LEXIS 13669 (6th Cir.). This can make a significant difference in the amount of available coverage where some insurers are insolvent or the amount of coverage varies significantly over time.

An issue which remains largely unaddressed under Ohio law is the potential effect of a “Prior Insurance and Non-Cumulation of Liability” clause and whether such a clause may, in effect, prevent “all sums” allocation by an insured to one primary policy and the tower of umbrella and excess policies above it. The intended purpose of a Non-Cumulation clause is to allocate the entire loss to the first policy period providing coverage at each coverage level and to eliminate coverage in later years. The language used is relatively standard: “if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the insured prior to the inception date hereof, the limit of liability ... shall be reduced by any amounts due the insured on account of any such loss under such prior insurance." However, there are a number of unresolved issues as to how this language would be interpreted under Ohio law. The current majority view outside Ohio appears to hold that Non-Cumulation clauses are not "other insurance" clauses because they apply to successive policies rather than concurrent policies. See, e.g., Plastics Eng’g Co. v. Liberty Mut. Ins. Co., 466 F. Supp. 2d 1071, 1082 (E.D. Wis. 2006); Spaulding Composites Co. v. Aetna Cas. & Sur. Co., 176 N.J. 25, 42-44 (2003). Otherwise, Ohio law would generally find two conflicting “other insurance” provisions to nullify one another resulting in pro rata allocation.

If a Non-Cumulation clause were applied as written, then its application would be inconsistent with pro rata allocation because the entire loss would be covered only by the chronologically first policy providing coverage at each layer/limit of coverage. This, however, would not necessarily be inconsistent with “all sums” allocation as it might be interpreted as limiting the coverage available in any “targeted” period to that which was not provided in any prior coverage period, i.e., only the amount of any increase in coverage limits during that coverage period would be available. See, e.g., Stonewall Ins. Co. v. E.I. du Pont de Nemours & Co., 996 A.2d 1254, 1259-1261 (Del. 2010). While the application of the Non-Cumulation clause may appear superficially beneficial to insurers in that it may reduce the total amount of coverage available, it also focuses the loss on a limited number of
policies without any right of contribution against the entire coverage block pro rata. This may be a significant disadvantage to the insurers required to provide coverage. Further, the insured may have no real preference or may even benefit from this approach if the coverage limits available in the highest coverage year are sufficient to cover the loss.

Even after determining coverage, settling such long-tail exposures is a potential minefield revolving around the effect of a settlement on insurers who do not join in that settlement. By allocating a loss horizontally across the entire coverage block in settlement, an insurer may be deemed to have later waived the right to allocate the loss to any primary policy containing “all sums” language even if that insurer is not a party to the settlement. See, e.g., GenCorp, 2005 U.S. App. LEXIS 13669. On the insurer side, in order to obtain set off for a prior settlement, the insurer will likely have to establish that the prior settlement “was for the same damages” that the insured seeks to recover for a second time which can be difficult in long-tail claims. Goodrich Corp. v. Commercial Union Ins. Co., 9th Dist. Summit Nos. 23585 & 23586, 2008-Ohio-3200, ¶ 40-46. Further, insurers face the risk that non-settling insurers may be precluded from seeking contribution from settling insurers. See OneBeacon Am. Ins. Co. v. Am. Motorists Ins. Co., No. 5:09CV2979, 2010 U.S. Dist. LEXIS 116414 (N.D. Ohio Nov 2, 2010). This may substantially reduce the amount of recovery potentially available should the insured later seek to allocate ongoing losses to a non-settling insurer. Taken together, a non-settling insurer has to consider the possibility that it may not be able to establish a set off based on the prior settlement and may not be able to seek contribution from the settling insurers. As with the preceding issues, both insurers and policyholders face competing theories and risks which often makes settlement on agreed upon terms the most palatable resolution of a dispute.

Richard Rezie is a partner active in Gallagher Sharp’s Insurance and Appellate Practice Groups. He focuses on complex civil litigation, class actions, and defense of insurers, including toxic tort and environmental coverage claims, bad faith, unfair claims practices, and breach of contract. He has been a CMBA member since 2012. He can be reached at (216) 522-1097 or rrezie@gallaghersharp.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

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LOOKING AHEAD

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 8</td>
<td>Women Leading their Way to New Perspectives, Opportunities and Heights</td>
</tr>
<tr>
<td>March 11–12</td>
<td>Medical/Legal Summit</td>
</tr>
<tr>
<td>April 4</td>
<td>Annual Bench-Bar Memorial Program</td>
</tr>
<tr>
<td>April 20–21</td>
<td>Northern Ohio Labor &amp; Employment Law Conference</td>
</tr>
<tr>
<td>May 6</td>
<td>Cleveland Mock Trial</td>
</tr>
<tr>
<td>May 25</td>
<td>Greet the Judges &amp; GCs members-only reception</td>
</tr>
<tr>
<td>June 1–2</td>
<td>William J. O’Neill Great Lakes Regional Bankruptcy Institute</td>
</tr>
<tr>
<td>June 3</td>
<td>CMBA Annual Meeting at the Cleveland Convention Center</td>
</tr>
<tr>
<td>June 27</td>
<td>Golf Outing at Westwood Country Club</td>
</tr>
</tbody>
</table>
CMBA LEADERSHIP SERIES

We are so pleased to be continuing our CMBA Leadership Series this spring. The series kicked off in October with ABA’s Lead Law program which is built on a belief that leadership is the foundation in every role a lawyer serves as a professional. Next, we hosted “Leadership in Law: It’s Never Too Early to Lead” in January, offering training specifically designed for attorneys on the rise.

On March 8, which is also International Women’s Day, we’ll host “Women Leading their Way to New Perspectives, Opportunities and Heights.” The series will wrap up on May 25 with our leadership programming designed to support corporate and in-house attorneys.

We understand that your practice is busy and complex, so these specific days of training maximize your time out of the office with fresh perspectives on key topics. Register today.

HALF PRICE LEGAL DIRECTORY

Save 50% on the 2015-2016 print or electronic version of the Legal Directory. It includes court contact information, law firm mailing addresses, attorney phone numbers and email addresses. Additionally, we supplement the Directory with local, state and federal agency contacts, professional responsibility materials and attorney resources. Order your copy for a discounted member price of $17.50 (print) or $9.95 (electronic).

MEMBERSHIP PROMOTION CONTINUES

Now is the perfect time to invite your friends or colleagues to join because new and former* members will save 50% off membership and get all the benefits through June.

Start the conversation and then simply invite them to a program or bring them to a networking function so they too can see the benefits you get from membership.

Recruitment Bonus for current members: Ask those you recruit to list you as the referral on their application and earn a $25 credit on your account for each new member* you recruit.

*Some exclusions apply. Contact the CMBA membership department with questions.
Bridging the Disconnect Between Transaction and Litigation Counsel in Placing R&W Insurance

BY MARK ANDREINI

In the aftermath of M&A transactions gone bad, litigators or “dispute lawyers” often wonder what the parties could have been thinking when they entered into vague or confusing agreements, not appreciating the pressures of closing a deal. Transactional or “deal lawyers” often focus on getting the deal done and mitigating risk to their client, but may pay insufficient attention to provisions that will control the resolution of any post closing disputes. Likewise, deal and dispute lawyers can be ships passing in the night in the placement of transaction insurance, particularly representations and warranties (R&W) insurance. Understanding recurring issues relating to the recovery of proceeds under R&W insurance policies will assist deal lawyers to negotiate more favorable coverage terms.

The Deal-Side Point of View

R&W insurance covers financial losses resulting from untrue representations or warranties by the seller in the purchase agreement. In recent years, R&W insurance has become an important tool in the deal lawyer’s kit for facilitating M&A deals, and it is often an important consideration in how deals are structured.

Sellers like R&W insurance because it allows them to decrease their exposure to financial loss resulting from unintentional breaches of the representations and warranties. It also allows sellers to reduce the amount of the purchase price held back in escrow — monies that typically earn little, if any, interest for long periods of time.

Buyers like R&W insurance (in lieu of a higher cap for the seller’s liability) because the sellers might not be “good” for the promised indemnity in the event of a significant breach. The purchase price money may be long gone by the time a breach is discovered and the damages quantified. A deal may also involve multiple sellers who have different levels of indemnity obligations or ability to pay, making it difficult to recover for a breach.

While R&W insurance can be purchased for either the buyer or the seller, most often the buyer is the policyholder. A buyer’s side policy provides coverage for the buyer’s losses resulting from the seller’s breach, even intentional ones. A buyer’s side policy also allows a buyer to recover losses for a seller’s breach without having to pursue recovery against the seller. A seller’s side policy, on the other hand, typically provides coverage to the seller for claims brought by the buyer for breach of a representation or warranty. Unlike a buyer’s side policy, a seller’s side policy will almost always exclude coverage for the seller’s intentional breaches of representations and warranties.

Most “blanket” R&W policies cover the typical representations and warranties found in acquisition agreements, including those relating to the accuracy of financial statements, the ownership of inventory, intellectual property and real property, and undisclosed liabilities. But every deal is unique, and it is not uncommon for R&W policies either to cover those unique representations or to exclude them. Parties can also purchase “single issue” policies that cover enumerated representations and warranties. This flexibility makes R&W insurance attractive to deal lawyers.

Even though buyer’s side policies typically sit directly above any liability “cap” in the acquisition agreement, the transition from the seller’s indemnity obligations to the policy’s coverage is not seamless. Coverage under a buyer’s side policy can be both broader and narrower than the seller’s indemnity obligations. R&W insurance is narrower than the indemnity because the policy will exclude coverage for some breaches of the purchase agreement. For example, buyer’s side policies typically exclude loss arising from breach of covenants, environmental liabilities, and adverse tax rulings, even though the seller may be obligated to indemnify the buyer for such losses. But coverage under a buyer’s side policy can also be broader than the seller’s indemnification obligations with respect to coverage for third party claims. For example, some buyer’s side policies will provide coverage for defense costs for alleged breaches of representations and warranties involving liability to third parties, even if the seller’s indemnity does not.

The Dispute-Side Point of View — Arbitration Clauses Need to be Carefully Reviewed

A common feature in R&W policies is that coverage disputes are to be arbitrated. Deal lawyers readily accept these arbitration provisions (which often can be negotiated away), presumably because of the prevailing wisdom that arbitration results in faster and less costly resolution of claims. But in the event of a dispute, the agreed upon arbitration

Understanding recurring issues relating to the recovery of proceeds under R&W insurance policies will assist deal lawyers to negotiate more favorable coverage terms.
process can present unanticipated challenges, particularly for the policyholder.

One common drawback from the policyholder perspective is that arbitration clauses often provide that the policy will be construed “without regard to authorship of language and without any presumption in favor of either party.” Insurers have argued that this language negates rule of construction that ambiguities in a policy are to be construed against the insurer. Such provisions potentially deprive policyholders of a traditional advantage they have in coverage litigation.

The ubiquity of arbitration clauses in R&W policies also prevents the development of decisional law on disputed interpretations of standard policy language. Thus, insurers benefit from the institutional experience of litigating these issues, while policyholders that do not have experienced counsel may not. Two such recurring issues are the measure of damages allowed for breaches of financial disclosures and whether, in settling with the sellers, the policyholder may have impaired the insurer’s subrogation rights.

Proving Loss for Breach of Financial Representations under Buyer’s Side Policies.

Deal lawyers often do not consider the measure of damages under the buyer’s side policy for misrepresentations of the company’s financial condition. In a dispute with the seller, a buyer would argue that because the company’s earnings (or other financial metric) were misrepresented, its damages equal the amount it was induced to overpay for the company. Under indemnity provisions in many acquisition agreements, such “benefit of the bargain” damages are potentially recoverable (subject to any caps in the acquisition agreement).

But insurers may argue that such damages are not recoverable under buyer’s side policies even if they are recoverable under the acquisition agreement. Specifically, insurers may contend that exclusions for “diminution in purchase price” or “multiplied damages” preclude recovery for damages expressed in terms of multiples of EBITDA or other metrics. There is little guidance in the case law on how these specific terms should be construed. For example, are “benefit of the bargain” damages excluded if they are not measured by multiplying a financial metric (e.g., a calculation of the company’s value using a discounted cash flow analysis)? And does an exclusion for “diminution in purchase price” mean that all “benefit of the bargain” damages are excluded, or does “diminution in purchase price” refer only to the seller’s obligations under contractual purchase price adjustments? These are just some of the issues that dispute lawyers must navigate.

Some of these disputes can be avoided in negotiating the policy. Some standard R&W products have no exclusions for “multiplied damages” or “diminution in purchase price.” And even if the policy form contains such an exclusion, it often can be modified or eliminated through negotiation. Particular attention should also be given to any exclusions or limitations for consequential, special or indirect loss, including lost good will or lost profits.


Another important feature of buyer’s side policies that is not sufficiently appreciated by many deal lawyers is the subrogation provision. Subrogation refers to the right of an insurer to pursue any third party that caused the policyholder’s loss. In the context of R&W insurance, insurers typically agree not to subrogate against a seller except in instances of fraud. This restriction on claims against sellers is important for several reasons. Sellers are often retained by the buyer post closing.
to run the acquired company, and thus may now be key employees of the policyholder. Also, in cases where the breach is obviously unintentional, deal lawyers want to facilitate settlements between the buyer and the seller without having to worry about impairing the insurer’s subrogation rights.

But what if the buyer suspects the seller made an intentional misrepresentation? Fraud is often viewed as a “can-opener” that allows the buyer to pursue recovery against the seller in excess of the agreed upon liability cap. Too often, aggrieved buyers advance fraud claims for the purpose of increasing the seller’s litigation risk to maximize recovery of the escrow. But ironically, resolution of the claim against the seller is made more difficult by the assertion of fraud. If a settlement agreement releases an asserted fraud claim against the seller, it may be difficult for the buyer/policyholder to contend later that the insurer was not prejudiced by the release.

One partial solution at the policy placement stage is to narrow the fraud exception to cases of intentional and knowing fraud. Another possible solution is for the policyholder to conduct a fraud investigation early on in its investigation of a breach and then provide the findings to the insurer. If the insurer agrees that there is no viable fraud claim, the insurer may consent to a settlement with a full release. If there is a viable fraud claim, and the matter is covered, the insurer should pay the loss in excess of the retention and then proceed against the seller. Otherwise, if the insurer neither consents nor pays, the policyholder’s option is either to litigate the claim against the seller to the bitter end or to settle with the seller and risk adding “impairment of subrogation rights” to the list of the insurer’s coverage defenses.

**Conclusion**

The essential point? Deal lawyers and clients should consider consulting dispute lawyers in placing R&W insurance to maximize insurance recovery and minimize transaction risk.

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**Mark Andreini** is a partner at Jones Day and a member of its Insurance Recovery Practice. He has appeared in courts across the country and in domestic and international arbitrations, including cases involving toxic tort, environmental, D&O, fidelity, and representations and warranties coverage. Mark also regularly advises corporate clients on policy placement and other insurance related matters. He joined the CMBA this year. He can be reached at (216) 586-7101 or mjangreini@JonesDay.com.

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Celebration for New Lawyers

On Thursday, December 10, we hosted nearly 100 guests at our annual event to celebrate and welcome the newly sworn in attorneys who had passed the July Bar Exam. These new attorneys were greeted by many members of our judiciary, CMBA officers and trustees as well as section and committee leaders. This year, the event coincided with the CMBA’s New Lawyer Bootcamp, so we were pleased to have those attorneys join us after their second day of hands-on, practical training.

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Ian Friedman and Judge Ronald Adrine

Judge Maureen Clancy, Judge Joan Synenberg, Crystal Bryant, Judge Denise Rim, and Ashley Jones

George Carr

Marlene Otero, Jeffrey League, and Pooja Patel

Henry Bailey, Chris Hanwell, and Michelle Cook
Ethical Obligations When Working With the Abruptly Unavailable Attorney

You are litigating a contentious civil matter, and the opposing counsel has made an offer of settlement that expires in 24 hours. An hour after sending you the offer, that opposing counsel was served with an interim remedial suspension from the practice of law in Ohio. You learn about it shortly thereafter. Although your opposing counsel has 30 days to inform his client about his suspension, you do not know if he has already done so. In the meantime, may you negotiate a settlement with the attorney? Should you contact the opposing party directly?

You have a motion for summary judgment due tomorrow, and you read in today’s paper that your opposing counsel has died. Upon whom do you serve the motion? May you serve the opposing party directly?

It’s Friday afternoon. You are starting a trial on Monday, and you learn that your opposing counsel suffered a stroke and is hospitalized. May you contact the court to unilaterally request a continuance?

Death and Disability
An attorney who passes away ceases to represent his or her client. However, an attorney who falls victim to a serious illness or disability continues to be the client’s attorney, even while incapacitated. These distinctions become important in determining your ethical obligations under Ohio Professional Conduct Rules 4.2 and 4.3.

Interim Remedial Suspension
Ordinarily, before an attorney is suspended from the practice of law, he or she is a party to an extensive disciplinary process. During the pendency of that disciplinary case, an attorney may begin preparing for the temporary or permanent loss of his or her law license. The attorney is afforded adequate time during the case to either wind down his or her practice, or add co-counsel to all active cases to ensure a successor is prepared to protect the clients’ interests. Such measures are necessary because an attorney’s ability to practice law is immediately halted upon the Supreme Court’s issuance of an order of suspension. For example, if an attorney is in the middle of a trial upon learning of an order of suspension, that attorney must cease acting as the attorney of record immediately.

However, there is now a fast-track method to suspend an attorney’s license: Ohio Gov. Bar Rule V, Section 19 permits the Supreme Court to impose an Interim Remedial Suspension in emergency situations. The Court may suspend an attorney from the practice of law almost immediately after being informed of a significant issue. Recent examples of the Supreme Court issuing interim remedial suspensions include cases where a Certified Grievance Committee accused an attorney of hypnotizing female clients to induce sexual behavior, or in another case where it alleged an attorney engaged in repeated instances...
of stealing settlement funds from clients. The regular disciplinary process follows the interim remedial suspension, but the attorney is abruptly removed from the practice of law at the beginning of the case, instead of at the end. This unusual and drastic remedy is reserved for extreme situations and it requires a high standard of proof. The Court must receive substantial, credible evidence demonstrating that attorney’s alleged violation of the Ohio Professional Conduct Rules poses a substantial threat of serious harm to the public. Instead of waiting for the disciplinary process to proceed (which generally takes between six and twelve months), the Court can temporarily remove an attorney from practicing law within days or weeks. In theory, the entire process could occur within a single day; the rules permit the Court to rule before obtaining the accused attorney’s response. The Court may also appoint an attorney to represent the interests of the suspended attorney’s clients.

Attorneys’ Obligations in Encountering the Abruptly Unavailable Opposing Counsel

These scenarios raise ethical issues under Prof. Conduct Rules 4.2 and 4.3.

As soon as an attorney receives an order of suspension — whether for a set term or an interim remedial basis — he or she is precluded from engaging in the further practice of law. If he or she did not belong to a law firm or have co-counsel, the client is likely an unrepresented party. Similarly, if a solo practitioner unexpectedly passes away without co-counsel, his or her clients ordinarily become unrepresented parties.

There is one exception: In both of these scenarios, an attorney’s prior appointment of successor counsel may convert a client who would ordinarily be unrepresented into someone who remains represented. Whether successor counsel immediately steps into the shoes of the predecessor is contingent upon the arrangements the predecessor made with his or her clients in the representation agreement, and the agreement the predecessor made with the successor counsel prior to becoming unavailable. Attorneys may enter legal agreements with other attorneys to assume their practices upon death, disability, and/or suspension — or merely to take action to route those files to other competent counsel. Depending upon the language of that agreement, and the prior knowledge and consent of the client, the continued representation may or may not be instantaneous. This is an especially good reason to exercise caution in making direct contact with a client you presume to be newly unrepresented: If that client previously consented to being represented by his or her counsel’s designated successor, new counsel may already be in place without your knowledge.

Excluding these possibilities, if a client is represented by an attorney who died or was suspended without leaving co-counsel or successor counsel behind, he or she is now an unrepresented person under Ohio Prof. Conduct Rule 4.3. Therefore, Prof. Cond. Rule 4.2 is not a bar to communicating with the opposing party; but you must follow the mandates of Rule 4.3:

a. You must make clear to the unrepresented individual that you are not disinterested. (In other words, you represent the opposing party whose interests are adverse to those of the unrepresented individual.)

b. If you know or should know that the opposing party doesn’t understand that you represent an adverse party, you must make reasonable efforts to correct that misunderstanding.

c. You must not give legal advice, other than to advise the individual to secure new counsel. Although Prof.Cond. Rule 4.3 permits direct contact with the previously represented client, that communication should be narrow and well-documented. The attorney must strongly consider whether the communication is necessary and advisable. Even when the rule permits direct contact, it could appear unseemly to contact the now-unrepresented party to generally discuss the case, even if the attorney follows Rule 4.3’s strictures. Further, the client may actually have successor counsel. So the best practices should be:

- If attorneys can avoid direct contact with a formerly represented party altogether, that is ideal. If circumstances permit, the attorney should wait for the newly unrepresented party to contact the Court or secure substitute counsel.

- If some contact is necessary due to deadlines or other circumstances, keep that communication exclusively limited to written communication, which is less susceptible to misinterpretation and can be vetted by ethics counsel. Begin by stating that you understand the party’s counsel has died / been suspended and that the client is currently unrepresented. Explain that if your understanding is incorrect because that client has other counsel, they should disregard the remainder of your communication, and provide it to their counsel to respond.

- Consider involving the court in making contact with a formerly represented party by moving for a hearing that will require the unrepresented party’s response or appearance. In addition to avoiding a potential question about your compliance with Rule 4.3, the court may facilitate a discussion about extending current timelines to accommodate the unrepresented party’s need to obtain new counsel.

All of this lies in stark contrast to merely disabled attorneys. A solo practitioner who suffers a stroke or heart attack, or is otherwise incapacitated for a period of time, may be just as unavailable as the attorney who has been suspended or who has passed away. However, that attorney continues to represent his or her client. In that circumstance, opposing counsel may not contact the represented party without the attorney’s consent under Prof.Cond. Rule 4.2. Attorneys should avoid making even superficial, procedurally-based contact with represented parties; instead, the attorney should contact the Court for assistance in addressing the incapacitated attorney’s unavailability.

Kim Riley is the Chair of the CMBA Ethics Committee. She is a partner with Montgomery, Rennie & Jonson where she focuses on employment, civil rights, and attorney disciplinary defense. She has been a CMBA member since 2009. She can be reached at (440) 779-7978 or kriley@mjrlaw.com.
## Medical/Legal Summit

### March 11 & 12, 2016

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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| 8:15 a.m. | Introduction to Medicare and Medicaid  
Susan O. Scheutzow, Kohrman Jackson & Krantz LLP |
| 9:30 a.m. | Fraud and Abuse  
Kelly J. Skeat, Benesch, Friedlander, Coplan & Aronoff LLP |
| 10:30 a.m. | Break |
| 10:45 a.m. | AntiTrust  
Brian K. Grube, Jones Day |
| 11:45 a.m. | Lunch; Federal and State Updates (1.25 Hours)  
Jennifer M. Hart, Kohrman Jackson & Krantz LLP (State Update)  
Paul T. Kostyack, Associate General Counsel, University Hospitals Health System, Inc. (Recent Stark Law Settlements) |
| 1:30 p.m. | Billing/Audits Roundtable  
Colleen Deighan, Senior Director, Coding Compliance, Cleveland Clinic  
Peggy Beat, Esq., Senior Director, Research Compliance, Cleveland Clinic  
David Schweighofer, Esq., Healthcare Practice Group, Brouse McDowell |
| 2:45 p.m. | Break |
| 3:00 p.m. | Life Sciences and Innovations Roundtable  
Jeff Cicarella, Counsel, Cleveland Clinic  
Craig Hayden, Toroll, Sundheim, Covell & Tammina LLP |
| 4:15 p.m. | Adjourn |
| 4:15 p.m. | Registration |
| 4:30 p.m. | Welcome & Introductions  
Anne Owings Ford, CMBA President  
Matthew E. Levy, MD, AMCN0 President |
| 4:45 p.m. | Keynote Presentation: Welcome to Healthcare in 21st Century America  
Margaret E. O’Kane, Founding and Current President of the National Committee for Quality Assurance (NCQA)  
Margaret E. O’Kane was elected a member of the Institute of Medicine in 1999 and received the 2009 Picker Institute Individual Award for Excellence in the Advancement of Patient-Centered Care. Modern Healthcare magazine has named O’Kane one of the “100 Most Influential People in Healthcare” ten times, most recently in 2015, and one of the “Top 25 Women in Healthcare” three times. She received the 2012 Gail L Warden Leadership Excellence Award from the National Center for Healthcare Leadership. |
| 6:15 p.m. | Adjourn to Networking Reception |
| 7:30 a.m. | Registration & Breakfast |
| 8:00 a.m. | Welcome & Introductions |
| 8:15 a.m. | Telemedicine: Achieving High-Quality Innovative Healthcare Delivery – Plenary Session  
Kimberly Anderson, Esq., State Medical Board of Ohio, Chief Legal Counsel  
John Jesser, Anthem Insurance, President, LiveHealth Online/VP, Provider Engagement Strategy  
Natasa Sokolovich, JD, MSHCPM – UPMC, Executive Director, Telehealth/Senior Director, Practice Solutions |
| 9:15 a.m. | End of Life Issues – Plenary Session  
Lance Tibbles, JD, Professor of Law, Director, Ethics Institute, Capital University Law School  
Elizabeth (Betsy) Malloy, JD, The Andrew Katsanis Professor of Law, University of Cincinnati College of Law  
Kristin Englund, MD, Staff Physician, Cleveland Clinic |
| 10:15 a.m. | Break |
| 10:30 a.m. | Breakout Sessions  
(1) Practicing in an “Opioid Epidemic” – Best Practices, New Regulations and Other Developments  
Representative, Ohio Board of Pharmacy (invited)  
Physician Member, Governor’s Cabinet Opiate Action Team (invited)  
(2) HIPAA Update and Implications of the Use of Electronic Medical Records  
Joseph A. Dickinson, Esq., CHPC, Privacy & Information Security Officer, Office of General Counsel, The MetroHealth System  
Tejal Vakharia, Esq., Senior Vice President & Chief Compliance Counsel, Allscripts |
| 11:30 a.m. | Break |
| 11:45 a.m. | Breakout Sessions  
(1) Medical Malpractice: The Effects of Tort Reform, Damage Caps and the Affordable Care Act  
Devin O’Brien, The Doctors Company  
Leslie M. Jenny, Esq., Marshall Dennehey Warner Coleman & Goggin, PC  
Paul Grieco, Esq., Landskroner Grieco Merriman, LLC  
(2) Ohio Medical Board Round Up: One Bite, Mandatory Reporting and Other Issues  
Elizabeth Y. Collis, Esq., Collis Law Group LLC  
Kelly Long, MBA, Executive Director, Ohio Physicians Health Program, Inc. |
| 12:45 p.m. | Adjourn |
Early Registration

Health Law Institute Only
Friday, March 11 until 4:30 p.m.
- $150 CMBA Members, AMCNO Members and other Health Care Providers
- $225 Non-Members

Health Law Institute & Summit
All sessions March 11 & 12
- $175 CMBA Members, AMCNO Members and other Health Care Providers
- $250 Non-Member

Summit Only
Friday from 4:30 p.m. and Saturday
- $75 CMBA Members, AMCNO Members and other Health Care Providers
- $125 Non-Members

Breakout Sessions – Choose One Per Track
Track One:  □ Opioid Epidemic or □ HIPAA Update
Track Two:  □ Tort Reform or □ Medical Board Round Up

Name ____________________________________________ Atty. Registration No. __________________________
Firm ____________________________________________
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Phone ____________________________________________ E-mail ________________________________

TOTAL $ __________________________

☐ I have submitted a membership application within the last 30 days.  ☐ Check Enclosed

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Signature _________________________________________________________________________________________________

ATTORNEY REGISTRATIONS: Make checks payable to Cleveland Metropolitan Bar Association. Mail to PO Box 931891, Cleveland, Ohio 44193, or fax to (216) 696-2129 (fax registrations must include credit card payment). Cancellations must be received in writing 3 business days prior to the program. Refunds are charged a $15 administrative fee. Substitutions or transfers to other programs are permitted with 24 hours written notice. (Transfer is to a single program and funds may be transferred only once.) Persons needing special assistance to attend this program are asked to contact the CMBA at (216) 696-2404, at least one week prior to the program.

PHYSICIAN AND HEALTH CARE PROVIDER REGISTRATIONS: Phone/fax or mail to: AMCNO, 6100 Oak Tree Blvd, Ste. 440, Independence, OH 44131, Phone: (216) 520-1000 FAX: (216) 520-0999. Physicians and other healthcare providers may also pay the AMCNO online at www.amcno.org. Make checks payable to the AMCNO.

This activity was planned and implemented in accordance with the Essential Areas and Policies of the Ohio State Medical Association (OSMA) through the joint sponsorship of St. Vincent Charity Medical Center and The Academy of Medicine of Cleveland & Northern Ohio (AMCNO). St. Vincent Charity Medical Center is accredited by the Ohio State Medical Association (OSMA) to provide continuing medical education for physicians. The St. Vincent Charity Medical Center designates this live activity for a maximum of 5.5 AMA PRA Category 1 Credits™ Physicians should claim only the credit commensurate with the extent of their participation in the activity.

* The AMCNO has obtained approval from University Hospitals (UH) for five hours of Clinical Risk Management Education (CRME) credit for those physicians participating in the UH Sponsored Physician Program. Please note: 1 CRME Credit is available for 3/11/16 (Friday) and 4 CRME credits for 3/12/16 (Saturday).

Professional Practice Gap: The Patient Protection and Affordable Care Act (PPACA), has significantly transformed the U.S. healthcare delivery system and the culture of medicine. In addition to the Act, other forces are already reshaping medical practice. They include the management of patients on chronic opioid therapy, the use of telemedicine, the use of physician extenders, medical marijuana, and end of life issues.

This program will give participants a medical-legal overview of changes in the health care delivery systems, their impact on the practice of medicine, and various strategies to meet these challenges.

Global Desired Learning Outcomes: At the completion of the session, participants should be able to:
- Identify the benefits, risks and legal ramifications of the use of telemedicine,
- Identify the benefits, risks and legal ramifications of the use of physician extenders,
- Describe effective avenues for communication between government and the medical community in the Affordable Care Act,
- Cite legislative and regulatory initiatives that affect the practice of medicine and understand how these initiatives impact the treatment and the prescribing of opiates to patients,
- Recognize the issues related to medical marijuana
The Basics of Traumatic Brain Injury

Traumatic brain injury (TBI) arises from two causes — either open or closed head injuries. Open head injuries, also called penetrating injuries, occur when an object penetrates the brain causing specific injuries. Closed head injuries, on the other hand, are caused by direct blows to the head (such as when the head strikes an interior surface in a car crash, or a hard surface as a result of a fall) as well as by sudden acceleration or deceleration accompanying an impact, causing the brain to move quickly back and forth within the skull cavity. In addition, there are two types of traumatic brain injury — primary brain damage and secondary brain damage. Primary brain damage is the damage caused immediately at the time of the impact, while secondary brain damage arises from swelling or increased blood pressure in the skull following the initial injury, or by other factors such as oxygen deprivation (hypoxia) resulting from the interruption of blood flow, or the effects of persistent inflammation caused by the immune system and resulting degeneration following even a single injury.

Objective physical evidence of the most common forms of TBI has been difficult to obtain in the past, especially where the types of closed head injuries most commonly associated with motor vehicle accidents are concerned. Sudden acceleration and deceleration can cause what is known as a “coup-contrecoup” injury, where the brain essentially “bounces” off one side of the interior of the skull and strikes the other. Localized lesions or bleeding caused by the brain striking the interior of the skull may be detectible through the use of standard imaging studies, but this is not true of all brain injury. The most common damage associated with acceleration/deceleration injuries in motor vehicle crashes is diffuse axonal injury (DAI). DAI occurs when the brain deforms in response to sudden acceleration or deceleration, which causes the white matter fibers of the brain to tear in a non-localized, or “diffuse” manner, most frequently in the portions of the brain associated with cognition and social and behavioral control (such as the medial orbital surface of the frontal lobes and the anterior surface of the temporal lobes).

Injuries of this type clearly can have both an immediate and lasting effect on their victims, but they can elude standard imaging technologies. However, newer imaging technologies such as diffusion tensor imaging (DTI) now permit precise visualization of damage to white matter that can result from such an injury. Other radiological innovations include susceptibility weighted imaging (SWI), which is a 3D magnetic resonance imaging (MRI) sequence that is particularly attuned to detect small hemorrhages in the brain, as well as fluid-attenuated inversion recovery (FLAIR), which allows for the precise assessment of lesions associated with neurological injury. Radiological imaging, however, is not the only means by which the existence and scope of TBI can — or should – be diagnosed. Neuropsychological assessment is also a critical component of determining the scope and severity of a person’s injury, and its impact on his or her cognitive and emotional capabilities.

What Traumatic Brain Injury Means in Personal Injury Cases

An attorney presenting a case involving traumatic brain injury must have a comprehensive understanding of the medicine and technology involved in detecting, diagnosing and treating TBI, and must keep him or herself informed of the most recent advances in the science of TBI and the effects of TBI, both short and long term, on its victims. He or she must also make sure to engage appropriate experts who are trained in and understand the most current diagnostic tools, both radiological and clinical.

A neurologist who is experienced in the diagnosis and treatment of TBI and can access the most recent technology is critical, as is a neuropsychologist or neuropsychiatrist who can properly assess the client’s deficits and explain them to the jury, as sometimes even the client will not fully understand or appreciate the extent to which he or she has been compromised by the injury.

In addition to diagnostic experts, it is often necessary to retain experts in physical medicine and rehabilitation to address the client’s need for physical and occupational therapy. Likewise, it is often necessary to retain a psychologist or other clinical counseling professional who is familiar with the effects of TBI on its victims and on their family members. While personality changes are a common result of TBI, the injured person often has little insight as to their effects on others. Thus, educational and emotional support for the injured person and the family, along with cognitive behavioral therapy, are often necessary elements of treatment.
and it is important to have the appropriate professionals as experts in order to explain these issues to the finder of fact.

Though public awareness of TBI has probably never been higher, its mechanisms and effects still are not commonly known or widely understood, either by laypersons or the legal community. Even front line medical professionals can miss TBI in victims of traumatic injury, as recent studies indicate that as many as 56 percent of mild TBI injuries go undiagnosed by emergency room staff. In those cases, the client’s family is typically the first to notice problems with memory loss, impaired cognition, or changes in mood and personality. Clients and families who are struggling with TBI symptoms and rehabilitation can easily get frustrated, and often don’t know where to turn. Attorneys who are familiar with the short and long-term difficulties of TBI can help these families connect with the care and resources they need.

1 According to the CDC, approximately 2.5 million emergency room visits, hospitalizations and deaths were associated with TBI in 2010 alone, with falls and motor vehicle injuries being the first and third overall largest causes, and unintentional blunt trauma (being hit by an object) being the second largest cause. See Traumatic Brain Injury in the United States: Fact Sheet (available at http://www.cdc.gov/traumaticbraininjury/get_the_facts.html last accessed on January 13, 2016).

2 Though much attention has been focused on the association between repeated brain trauma and later neurodegenerative diseases, recent scholarship indicates that even a single injury may create a predisposition to future cognitive decline. See Johnson, VE, et al., Inflammation and white matter degeneration persist for years after a single traumatic brain injury, Brain, 2013 Jan; 136(Pt 1):28-42 (single injury associated with increased risk of dementia and Alzheimer-like pathologies); Wang, Hao-Kuang, et al., Population based study on patients with traumatic brain injury suggests increased risk of dementia, J Neurol Neurosurg Psychiatry 2012;83-1080-1085 (longitudinal study showing suggesting increased risk of dementia in Asian TBI victims).


4 DTI (also known as diffusion MRI) uses magnetic resonance imaging to produce three dimensional images of the brain's neural tracts by measuring the flow of water molecules as they follow nerve fibers through the tissues of the brain. See, e.g., Alexander, Lee, and Field, Diffusion Tensor Imaging of the Brain, Neurotherapeutics, 2007 Jul; 4(3): 316-329. Its effectiveness in detecting brain damage in TBI cases is well-accepted in the medical community and has been deemed admissible by federal courts. See, e.g., Andrew v. Patterson Motor Freight, Inc., No. 6:13CV814, 2014 U.S. Dist. LEXIS 151234 (W.D. La. Oct. 23, 2014).

Kimberly Davenport


Mandatory bifurcation of punitive damages from the liability phase of trial is the established law in Ohio pursuant to R.C. 2315.21(B). In 2013, the Eighth District Court of Appeals expanded bifurcation for insurance bad faith claims. Devito mandates a stay of discovery for the bad faith claim until after resolution of the coverage claim. The Devito court reasoned the risk of prejudice to the defendant insurance company is too great to allow a plaintiff to discover the contents of the insurance claim file until after the trial on the coverage claim. Over two years later, bifurcation of bad faith discovery is proving to be a procedural challenge for both litigants and trial courts.

In Devito, the plaintiff filed breach of contract and bad faith claims against her insurance companies after denial of coverage for property damage to her home. During the pendency of the case the defendants filed a motion to bifurcate the bad-faith claim from the contract claim and a motion to stay the bad-faith claim pending determination of the breach of contract claim. Defendants sought to prevent discovery of their claim files until after the coverage claim was resolved. The trial court granted the motion to bifurcate but denied the motion to stay. The trial court ordered the trial of the bad faith claim to commence immediately upon conclusion of the trial of the breach of contract claim and ordered discovery to proceed on all issues.

Defendants filed an interlocutory appeal of the trial court’s ruling. The Eighth District Court of Appeals reversed the trial court’s denial of defendants’ motion to stay, finding that the trial court abused its discretion by failing to stay discovery on a bad faith claim until the resolution of the coverage claim.

While the Devito court acknowledged the plaintiff was entitled to discovery from the insurance claim file on her bad-faith claim, the court ultimately determined in a 2-1 panel that failing to stay discovery would be prejudicial to the defendants. Exposing the contents of the claim files would “inhibit the insurer’s ability to defend on the underlying claims and [would] be highly prejudicial to [the defendants].” Devito at ¶15. The court reasoned that although judicial economy weighs in favor of adjudicating both claims in back-to-back trials, such concerns were outweighed by the risk of prejudice to the defendant insurance companies.

While bifurcation pursuant to Devito could save litigants time and money by pursuing the potentially-dispositive coverage issue first, it may not be the best procedural device in all cases. For bifurcation of punitive damages pursuant to R.C. 2315.21(B), the punitive damages phase of trial begins immediately following the initial liability phase, maintaining the same jury. However, under Devito, the parties begin engaging in discovery on the bad faith claim only after the coverage trial. The process necessitates a second discovery period and a second trial with a new jury. The need to bring in a new jury is potentially prejudicial to both parties, not to mention the huge expense of re-engaging in discovery. As a result, parties have greater incentive to settle both the bad faith claim and the coverage claim prior to trial on the coverage claim.

Although the risk of prejudicing a party is an important consideration, managing discovery should be left to the trial court’s discretion. The Devito decision seems to underestimate the trial court’s ability to manage discovery of potentially-prejudicial information as well as overstates the risk of prejudice. In fact, trial courts have tools at their disposal to monitor discovery and ensure that potentially-prejudicial material from the claims file is not admitted during the coverage phase of trial. The claims file discovery could be closely monitored through in camera review, allowing the trial court to decide on a case-by-case basis whether the coverage and bad faith claims could move forward simultaneously without prejudicing the defendant insurance company.

A less rigid rule that allows the trial court greater discretion is likely the best solution for fair and efficient adjudication of insurance bad faith lawsuits. The Ohio legislature is in the best position to institute reform. It may be some time before this issue is re-visited by the Eighth District. Reformative legislation would best enable the trial court to use discretion to determine the most effective means for adjudicating bad faith claims.

Kimberly Davenport is Judge José A. Villanueva’s Staff Attorney at the Cuyahoga County Court of Common Pleas. Prior to serving as a Judicial Staff Attorney, Kimberly was an Associate Attorney in the Insurance Defense and Coverage Section at Weston Hurd LLP. She has been a CMBA member since 2009. She can be reached at (216) 443-8609 or kdavenport@cuyahogacounty.us.
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Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice Video

February 26, 2016 – Submitted for 3.00 Attorney Conduct CLE – CMBA Conference Center
Registration: 8:30 a.m. Seminar: 9:00 a.m. – 12:15 p.m.
9:00 a.m. Overview of the Disciplinary Process / Places to Seek Assistance with Ethical Questions
Kimberly Vanover Riley, Montgomery Rennie & Janson
10:00 a.m. What If Preparedness; Using the CMBA’s WIP Program to Engage in Practice Succession Planning
Deborah A. Coleman, Coleman Law LLC
10:30 a.m. The Worse Case Scenario: Succession Planning for Law Firms
Mary K. Whitmer, Kohrman Jackson & Krantz LLP
11:00 a.m. Break
11:15 a.m. Laughing Lawyers: How the Science of Happiness Can Spark Your Career and Spice Up Your Life
Kurt Jensen, Psy.D., WorkSmart Consultants, LLC
12:15 p.m. Adjourn

Women Leading their Way to New Perspectives, Opportunities and Heights
Tuesday, March 8, 2016 – 6.25 CLE – CMBA Conference Center
8:30 a.m. Registration & Networking Breakfast
8:55 a.m. Welcome & Introductions
Amelia J. Leonard, Marshall Dennehey Warner Coleman & Goggin, Wil Section Chair
9:00 a.m. CMBA Diversity Survey 2.0
Sonali B. Wilson, Audit Werks, Bens, Ockner & Greenberger, LLC and CMBA VP of Diversity
9:45 a.m. Grit Project Training – 2 Hrs (with 15 min break)
The Grit Project educates women lawyers about the science behind grit and growth mindset — two important traits that many successful women lawyers have in common. By providing the tools to assess and learn these traits, the Grit Project enhances the effectiveness as well as the retention and promotion of women lawyers. Each pair of panelists will address a scenario common in the workplace. Following the panel discussion, we will move to small group discussions of the issue, with highlights shared with the audience.
Christina M. Huszcza, Tucker Ellis LLP (Denver) and ABA Grit Project Facilitator, Moderator
9:45 a.m. Grit Project Training – 2 Hrs (with 15 min break)
The Grit Project educates women lawyers about the science behind grit and growth mindset — two important traits that many successful women lawyers have in common. By providing the tools to assess and learn these traits, the Grit Project enhances the effectiveness as well as the retention and promotion of women lawyers. Each pair of panelists will address a scenario common in the workplace. Following the panel discussion, we will move to small group discussions of the issue, with highlights shared with the audience.
Christina M. Huszcza, Tucker Ellis LLP (Denver) and ABA Grit Project Facilitator, Moderator
Amy J. Casner, Leiden Cabinet Co.
Lisa A. Cottle, U.S. Department of Labor, Solicitor’s Office
Laura W. Creed, Chief Judicial Staff Attorney, Cuyahoga County Court of Common Pleas
Mary K. Whitmer, Attorney at Law and CMBA President
10:45 a.m. Pleading Requirements under the Federal Rules of Civil Procedure & Federal Case Law
Richik Sarkar, McDonald Hopkins LCC
11:15 a.m. Laughter Lawyers: How the Science of Happiness Can Spark Your Career and Spice Up Your Life
Kurt Jensen, Psy.D., WorkSmart Consultants, LLC
Laura A. Hauser, Attorney at Law
Rosemary Sweeney, Buckley King LPA
Mary Jane Trapp, Thrasher Downsore & Dolan LPA
Mariah Butler Vogelgesang, Office for Institutional Equity, CSU
Mary K. Whitmer, Kohrman Jackson & Krantz LLP

12:00 p.m. Lunch (included)

12:45 p.m. Leadership in the Board Room: Panel Discussion
Led by 2020 Women on Boards, including:
Janet Jankura, Green Earth Technologies
Rebecca Ruppert McMahon, CMBA Executive Director, Moderator

2:00 p.m. Breakout Sessions:
Career Negotiations: Making Your Case
Diane McNally, Ph.D., Diane McNally Consulting

Mastering the Art and Science of Mentoring
Kin Lyn Kaminski, Giffen & Kaminski, LLC
Janet L. Miller, University Hospitals Health System, Inc.
Hon. Melody J. Stewart, 8th District Court of Appeals

3:00 p.m. Break

3:15 p.m. Breakout Sessions:
Rainmaking: Yes, You Can
Judy Bodenhamer, President, Revenue Resources

Barbara K. Roman, Meyers, Roman, Friedberg & Lewis
Amelia J. Leonard, Marshall Dennehey Warner Coleman & Goggin, Moderator

Transitioning Your Practice: Ramping Up or Scaling Back
Virginia Davidson, Coffee Halter & Griswold
Sarah C. Flannery, Thompson Hine
Betsy Rader, Tharman Peterson Group
Musette T. Vincent, Jackson Lewis LLP

Taking the Wheel: Driving Your Own Practice
Sherri L. Dahl, Dahl Law LLC
Rhonda Baker Debevec, The Debevec Law Firm
Ashley L. Jones, Ashley Jones Law Firm
Marilena DiSilvio, Elk & Elk Co., Ltd., Moderator

4:05 p.m. Break

4:10 p.m. Building Your Communication Style: Finding Your Voice
Amanda J. Martinsek, Thacker Martinsek, LPA
Marilou Myrick, The Stage
Betsy Rader, Tharman Peterson Group, Moderator

4:55 p.m. Closing Remarks

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Mail to PO Box 931891, Cleveland, Ohio 44193, or fax Reservation Form to (216) 696-2129 (all fax reservations must include a credit card number, expiration date, and signature). Call the CMBA at (216) 696-2404 for further information. For electronic materials, registrants will receive a link to download or print materials in advance, or view online using a mobile device. CANCELLATIONS must be received in the CLE Department in writing three business days prior to the program. Refunds will be charged a $15 administrative fee. Substitutions or one-time transfers to other programs are permitted with 24 hour written notice. Transfers are to a single program and may be made only once. No refunds are issued on transfers. Persons needing special arrangements to attend this program are asked to contact the CLE Dept. at (216) 696-2404, (fax 696-2129) at least one week prior to the program. Complete tickets may not be split between attendees. CLE credit will not be granted to more than one attendee per ticket.

FUNDAMENTALS OF PRACTICE IN THE NORTHERN DISTRICT: FEDERAL COURT TRAINING PROGRAM VIDEO
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MUNICIPAL LAW – PRESIDENT’S DAY SEMINAR
2/25/16 – 3:00 CLE hours
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☐ $50 Government Attorneys/Law Directors Association Members
☐ $30 Affiliate (no CLE) ☐ $0 CLE Passport

RESILIENCE: HOW LAWYERS CAN PREPARE FOR AND COPE WITH THE UNEXPECTED IN PRACTICE VIDEO
2/26/16 – 3:00 CLE hours
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☐ $60 Government ☐ $0 CLE Passport

WOMEN LEADING THEIR WAY TO NEW PERSPECTIVES, OPPORTUNITIES AND HEIGHTS
3/8/16 6:25 CLE
☐ $125 CMBA Members ☐ $175 Non-Members
☐ $100 Government, Non-Profit & New Attorneys (less than one year)
☐ $0 CLE Passport ☐ $25 Reception Only

Registration includes lunch and electronic materials.
### February

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<td>Pillars Program – 10 a.m.</td>
<td>CMBA Board of Trustees</td>
<td>PLI – 8:30 a.m.</td>
<td>Ohio Mock Trial Cuyahoga Regional Competition – 11:30 a.m. – 5:30 p.m. (Cuyahoga County Courthouse)</td>
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<td>Estate Planning Section Meeting &amp; CLE</td>
<td>Labor &amp; Employment Section Meeting &amp; CLE</td>
<td>Family Law Section Meeting &amp; CLE</td>
<td>WIL Wellness Retreat – 2:30 p.m. (Global Center for Health Innovation)</td>
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<td>Grievance Committee Meeting</td>
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<td>Membership Committee Meeting</td>
<td>3Rs Committee Meeting</td>
<td>PLI – 8:30 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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<td>Federal Court Training Program Video – 9 a.m.</td>
<td>Annual President's Day Seminar &amp; Sunshine Law Training – 9 a.m.</td>
<td>Pro Se Plus Divorce Clinic – 1 p.m.</td>
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<td>PLI – 8:30 a.m.</td>
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<td>Diversity &amp; Inclusion Meeting – 4 p.m.</td>
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<td>CMBA Leadership Series: Women Leading Their Way to New Perspectives, Opportunities &amp; Heights – 8:30 a.m.</td>
<td>PLI – 8:30 a.m.</td>
<td>CMBA Executive Committee Meeting</td>
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<td>PLI – 8:30 a.m.</td>
<td>Estate Planning Section Lunch &amp; CLE</td>
<td>CMBA Board of Trustees Meeting</td>
<td>Pro Se Divorce Clinic – 10 a.m.</td>
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<td>Labor &amp; Employment Section &amp; CLE</td>
<td>Pro Se Plus Divorce Clinic – 1 p.m.</td>
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<td>Green Initiative</td>
<td>PLI – 8:30 a.m.</td>
<td>Court Rules Committee Meeting</td>
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<td>CMBF Grant Committee Meeting – 8:30 a.m.</td>
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<td>Federal Court Training Video – 9 a.m.</td>
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<td>YLS and Litigation Sections Cocktail Series – 5:30 p.m. (Velvet Tango Room)</td>
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<td>Resilience – Attorney Conduct Video – 8:30 a.m.</td>
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**Saturday, March 12** – Medical/Legal Summit – 8 a.m.  
Ohio Mock Trial State Tournament (Columbus)

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
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Leader Building – Office space available in elegant suite with several other attorneys, receptionist, optional secretarial space, library/conference room, fax, copier; telephone system, kitchen. (216) 861-1070 for information.

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Mentor – Two offices available at Carrabine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Carrabine at (440) 974-9911.

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kinser at (440) 884-4300.


Superior Building – Offices available in professionally decorated suite. Congenial environment with possible referrals. Will also consider barter arrangement for younger attorney seeking to establish own practice. Jack Abel or Lori Zocolo at (216) 621-6138.

Terminal Tower – Law offices available in prime location with reception area, secretarial space, conference room, copier; fax and kitchen. Reasonable rent. Call (216) 241-2022.

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Nice Office Furniture – desk, credenza, chair, bookcases, filing cabinet, storage for case files, leather couch, computer desk, modern marble work table (216) 856-5600

Sligh Mahogany Leather – Top Desk and Matching 4-Drawer Credenza – Tower East Office in Shaker Heights. Madelon Sprague at (216) 310-2512 or MadelSpague@gmail.com
**Services**


**Experienced Attorney** willing to co-counsel cases in Cleveland and all municipal courts – Contact Joe at (216) 363-6050.

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**Experienced Expert Witness** for probate, estate planning or related matters. ACTEC Fellow since 1994, Harvard Law, EPC “Planner of Year 2006.” Herb Braverman at hlblaw@aol.com.

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**Looking to slow down or starting to think about retirement?** Attorney with established probate/estate planning/small business practice looking to expand current practice; (216) 245-8861

**MarcoAuction.com** – Court: Estate and Probate, Divorce, Power of Attorney; Real Estate: Residential and Commercial; Appraisals: Insurance, Jewelry and Antiques; and Chattle Items: Farming equipment – Marco Marinucci, Auctioneer – (440) 487-1878 or RealEstateAuctions39@yahoo.com

**Premise Security Expert Witness and Consultant** – 35 years experience – 6 years providing expert services to attorneys – Thomas J. Lekan, (440) 223-5730 or tlekan@gmail.com – www.lekanconsulting.com

**Trial Attorney** – Experienced trial attorney in business litigation, personal injury, and complex family law. (25+ trials). Federal and State. stephen@neebittinger.com; (440) 782-7825.

**Video Conference, Deposition Facility** – Plaza West Conference Center, Rocky River offers conferencing and remote video, “smart” whiteboard conference facilities for 5–33 participants. plazawestcc.com (440) 333-5484.

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New Associations & Promotions

Walter | Haverfield LLP is pleased to announce that two new attorneys have joined the firm’s Real Estate Law group. David Ricco, a partner, offers clients comprehensive legal counsel in real estate matters. Partner David Mansbery, Jr. represents clients in a range of real estate matters.

Stephen M. Bales has been named Ziegler Metzger LLP’s Managing Partner: Lisa Roth was named a Partner. She joined the firm in 1998 and her practice focuses primarily on estate planning, probate, estate and trust administration, taxation and elder law.

Honors


In addition, the following attorneys have been selected as Rising Stars: Daniel A. Gottesman, Paul R. Harris, Elizabeth M. Hill, Pingshan Li, Gregory P. Stein, Andrea Stone, and Matthew T. Wholey.

Ulmér & Berne announces Michael N. Ungar tops the entire Ohio Super Lawyers list and ranks #1 of all attorneys in Ohio. In addition, Michael Tucker was named to the Top 100 and Patricia Shlonsky and Frances Floriano Goinz named to the Top 50 Women in Ohio and Top 25 Women in Cleveland.

Tucker Ellis LLP is proud to announce that 31 attorneys have been named Ohio Super Lawyers and another 13 have been selected as Ohio Rising Stars for 2016. Super Lawyers also named three Tucker Ellis Ohio attorneys to its prestigious “Top” lists: Rita Maimbourg – Ohio “Top 50: Women” and Cleveland “Top 25: Women,” John McCaffrey – Ohio “Top 10” and Cleveland “Top 5,” and Scott Stitt – Columbus “Top 50.”

Ohio Super Lawyers include: Henry Billingsley, Ann Caresani, Thomas Coffey, Harry Cornett, Stephen Ellis, Robert Hanna, Jeffrey Healy, Christopher Hewitt, Laura Hong, Irene Keyse-Walker, John Lewis, Irene MacDougall, Rita Maimbourg, John McCaffrey, Mark McCarthy, Joseph Morford, Matthew Moriarty, Glenn Morrical, Carl Muller, Brian O’Neill, Thomas Ostrowski, Anthony Petruzzini, Susan Racey, Keith Raker, Dustin Rawlin, Benjamin Sassé, Patricia Seifert, Scott Stitt, Robert Tucker, Jeffrey Weiler, and Kevin Young.

Ohio Rising Stars for 2016 included: Karl Bekeny, Michael Brink, Sarah Bunce, John Favret, Jonathan Feckzo, Erica James, Arun Kotha, Seth Linnick, Clifford Mendelsohn, Chelsea Mikula, Erika Ostrowski, Justin Rice, and Seth Wamelink.

Roetzel & Andress is pleased to announce Anna Moore Carulas was named among the Top 50 Ohio women lawyers and the Top 25 Cleveland women lawyers by Ohio Super Lawyers.


Rising Stars include Anthony M. Catanzarite, Brian Gannon, Jonathan Krol, Bethanie Ricketts Murray, and Brian P. Nally.

The following Weston Hurd LLP attorneys who have been named Super Lawyers: Gary W. Johnson, Business Litigation; Jack S. Kluznik, Employment Litigation; Defense; Nancy A. Noall, Employment & Labor; Michael J. Spisak, Workers’ Compensation, and Hilary S. Taylor.

The law firm of Dinn, Hochman & Potter LLC is pleased to announce that Michele C. Hennenberg and David C. Weiner, Of Counsels to the firm, have been selected as a 2016 Super Lawyer. The firm is also pleased to announce that Of Counsel, Aaron M. Minc, has been selected as a 2016 Ohio Rising Star.

Meyers, Roman, Friedberg & Lewis is proud to announce that Michael B. Gardner has joined the firm as Of Counsel. Robert N. Guliano is beginning his law career as an Associate with Meyers Roman.

Rolf Goffman Martin Lang LLP is pleased to announce the following Ohio Super Lawyers: Carol Rolf (Health Care Law); Aric Martin (Health Care Law); Paul Lang (Health Care Law); Ira Goffman (Health Care Law); Christopher Kuhn (Employment Litigation – Rising Star), and Cory Phillips (Health Care Law); Christopher Kuhn (Employment Litigation – Rising Star), and Cory Phillips (Health Care Law); Paul Lang (Health Care Law); Michael Jordan of Jordan Resolutions, LLC, was named to the 2016 Best Lawyers in America in Arbitration and Mediation, and was also designated an Ohio Super Lawyer in the field of Alternative Dispute Resolution. His article, Arbitration: Clause Drafting Guidance Under the AHLA Rules and Suggestions on Selecting an Arbitrator, appeared in the October 2016 edition of the American Health Lawyers Association Journal of Health & Life Sciences Law.

Buckley King is pleased to announce the following attorneys named to the 2016 Edition of Best Lawyers: Brent M. Buckley, Jeffrey Baddeley, Theodore M. Dunn, Jr., Harry W. Greenfield, Rosemary Sweeney, and Jeffery C. Toole.

Buckley King’s 2016 Ohio Super Lawyers include the following partners: Brent M. Buckley, Jeffrey Baddeley, Kenneth R. Callahan, Elizabeth A. Crosby, Theodore M. Dunn, Jr., Harry W. Greenfield, Lisa Arlyn Lowe, Rosemary Sweeney, and Jeffery C. Toole. Brent M. Buckley and Harry W. Greenfield have been recognized among Ohio’s “Top 100 Lawyers” and “Top 50 Lawyers.” Rosemary Sweeney and Elizabeth A. Crosby, as distinguished among the “Top 25 Women Lawyers in Cleveland.” In addition, Crosby has also been discerned among the “Top 50 Women Lawyers in Ohio.”

Rutter & Russin was ranked in the 2016 Edition of U.S. News – Best Lawyers “Best Law Firms” in the area of Insurance Law. Bob Rutter was chosen as the Best Lawyers’ Cleveland Insurance Law “Lawyer of the Year,” an award given to only a single lawyer in each practice area in each community. Bob Rutter was also selected to Super Lawyers in the area of Insurance Law, as he has been in each year since 2011. He was also named to Super Lawyers Top 50 in Cleveland and Top 100 in Ohio. Bobby Rutter was selected to Super Lawyers – Rising Stars in the area of Insurance Law.

Cleveland mediator Jerry Weiss has been honored by the International Academy of Mediators (IAM) and Arbitrators’ and Mediators’ Institute of New Zealand (AMINZ) by being a speaker at the AMINZ annual conference on the topic of Transformative Mediation – Can You Find Heart and Soul (and Adventure) in an Increasingly Numerical World.

Elections & Appointments

Carter Strang, a partner at Tucker Ellis LLP, was named Vice Chair of the Center for Community Solutions, a nonpartisan think tank headquartered in Cleveland that is focused on solutions to health, social and economic issues impacting Cuyahoga and contiguous counties.

The Asian American Bar Association of Ohio is pleased to announce the election of its 2016 Board members also include: Philip Bautista, Richik Sarkar, Elizabeth A. Crosby, as president; Margaret Wong. James Chin, Laura Hong, and Joanne Wu will continue to serve as advisors to the Board.

Cuyahoga County Common Pleas Court Judge John J. Russo has been reappointed as a member and Chair of The Lawyers’ Fund for Client Protection for a three-year term.

Two Cuyahoga County Common Pleas Court Judges have been elected as officers for the Ohio Common Pleas Judges Association in 2016. Judge David T. Matia was sworn-in as President Elect of the organization and Judge Michael P. Donnelly will serve as Third Vice President.

Cuyahoga County Common Pleas Court Judge Brendan J. Sheehan has been reappointed to the Supreme Court of Ohio’s Commission on Professionalism.

To best help those who are dealing with drug and alcohol addiction, and underlying mental health issues related to trauma, Cuyahoga County Common Pleas Court created a specialized Recovery Court docket, the first of its kind in Ohio.

Cheryl M. Wiltshire is pleased to announce the opening of The Wiltshire Law Firm, LLC at 55 Public Square, Suite 1055, Cleveland, Ohio 44113, phone (216) 687-4232 and fax (216) 687-4233.

Thomas C. Schrader is pleased to announce that he has opened a law office on Rockside Road to continue his practice of general business litigation. The office is located at 4141 Rockside Road, Suite 230, Seven Hills, Ohio 44131, direct line (216) 264-5122.

The Moskowitz Firm recently marked its fifth anniversary. Legal counselor Suzann Moskowitz celebrated her fifth year of business with more than 50 clients and friends at Piccadilly Creamery in Uptown.

Something To Share?

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
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