

News & Practice Pointers from OACTA

Spring 2018

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PRESIDENT'S MESSAGE

By: Jill K. Mercer
2018 OACTA President



Happy Spring, OACTA friends and colleagues! I am sure that most of you are as excited to see the greener grass and longer days as I am. I love the energy that comes with the warmer temperatures and extra sunshine, and look forward to channeling that into a fun, productive, and memorable year for OACTA. Thanks to its members, officers, board members, committee chairs, and sponsors, we are already off to a great start.

On March 23, the Insurance Coverage Seminar was held at Grange Insurance in Columbus. It was a tremendous success, with a record-breaking crowd in attendance (over 100 registered!). A large part of that success is due to the Claims Committee, which was formed last year and chaired by Charlie Wendland, as well as Mike Neltner's leadership as chair of the Insurance Coverage Committee. The large number of in-house counsel and claims professionals in attendance was no doubt a direct result of their efforts. The topics discussed during the program were relevant and informative, and the feedback I have received personally has been excellent. I want to thank Melanie Irvin, Rich Garner, Sunny Horacek, Mike Neltner, Tony Damelio, Greg O'Brien, John Farnan, and Dan Richards for presenting, as well as the many sponsors in attendance. Your support of OACTA assists in keeping it one of the strongest state defense bars in the country.

On May 3, Exponent will be hosting a webinar titled "What's Over the Horizon: Contaminants of Emerging Concern". Jaana Pietari, Ph.D., P.E., Managing Scientist, will present this hour-long seminar, which is being offered for free to our membership. You can register [here](#). Additionally, the Women in the Law Seminar has been scheduled for June 14 and 15 at the Le Méridien Columbus, The Joseph. It has been several years since this committee's last seminar, and we are excited to bring it back

SUBMIT Articles to include in The Update to:

[Tony Brown](#)

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[Ian Mitchell](#)

Upcoming Events

Mark your Calendars!

May 3rd

What's Over the Horizon: Contaminants of Emerging Concern Webinar

Sponsored by:
Exponent

[Register Today!](#)

June 14-15th

Women in the Law
Le Méridien Columbus,
The Joseph
Columbus, OH

[Details](#)

July/August

OACTA Happy Hour Series

September 4th

OACTA Foundation
Annual Golf Outing
Pinnacle Golf Club,
Grove City

November 15-16th

OACTA Annual Meeting

Hyatt Regency
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The Update Summer

bigger than ever. We are in the early stages of planning, but so far it looks to be a truly engaging and valuable program. More to come soon... for now I urge you all to spread the word and save the date!

The Summer Happy Hour Series will kick off in June (dates to be determined), with locations throughout Ohio. The Young Lawyer Committee has done a great job in planning and organizing these events over the last several years, which have provided our membership the opportunity to connect and perhaps blow off a little steam with some friends. Additionally, the OACTA Foundation's Golf Outing will be held on September 4, 2018, at Pinnacle Golf Club in Grove City, Ohio. This event has been a huge success for many years, and provides OACTA the opportunity to present a very generous donation to NFJE each year. Finally, the Annual Meeting has been scheduled for November 15 and 16 at the Hyatt Regency in downtown Columbus, with a networking event to be held at Pins Mechanical. Please mark your calendars now and plan to attend!

As you may know, we are always looking for content for OACTA's social media. If you have any victories to share or would just like to have a member profile, which typically consists of a headshot with a short statement of why you value OACTA, please send them to Debbie Nunner or David Oberly and they will be posted on our Linked In, Twitter, and Facebook pages. Those that have taken advantage of this feature have received positive feedback and it is also a great opportunity to market yourself, your firm, and/or your colleagues. We would love to hear from you!

Last, but most importantly, thanks to all members, old and new, for helping to make OACTA a diverse, engaging, and valuable organization dedicated to the defense of civil actions in Ohio. We value your membership and strive to make it worthwhile. I urge you to take advantage of the many opportunities that OACTA has to offer, whether it be attending (or presenting at) great CLEs, sending out Member Request emails or utilizing the expert witness database, leading or joining a committee, writing articles to be published in the Quarterly or Newsletters, drafting an amicus brief, joining colleagues at the many social/networking events, finding the right vendors, or some of the many other advantages that accompany your membership. Make the most of it!

Renew Your OACTA Dues!

If you have not already renewed your OACTA membership for 2018, renew today [here!](#)

Welcome New OACTA Members since December!

Michael	Andrews	State Farm Insurance Co.
Dana	Anthony	Nationwide Insurance
Lou	Antonelli	Oswald Companies
Shannon	Benton	Nationwide Insurance Co.
Maureen	Bickley	Frost Brown Todd LLC
Michael	Brink	Tucker Ellis LLP
Kandie	Carson	National Interstate/Vanliner Insurance
Zachary	Cloutier	Subashi & Wildermuth

**Issue deadline is
July 1, 2018**

**SUBMIT YOUR MEMBER
NEWS**

OACTA is always looking for announcements for the "Member News" section of the Update. Please submit your news via email to:

[Tony Brown](#)
or
[Ian Mitchell](#)

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Thomas	Coffee	Nationwide Insurance
Jeff	Dubin	National Interstate Insurance
Terese	Fennell	Seeley Savidge Ebert & Gourash Co. LPA
Scott	Freeland	Nationwide Insurance
Greg	Gilliam	Schools of Ohio Risk Sharing Authority
Megan	Gonzalez	Nationwide Insurance
Nancy	Griffiths	Great American Ins. Co.
James	Hoffmann	Nationwide Mutual Ins Co
Alison	Kinnear	Westfield Insurance
Steven	LaForge	Nationwide Insurance Company
William	Lehner	Frost Brown Todd/Capital University Law School
Paul	Mackenzie	Nationwide
Bill	McGee	Motorists Insurance Group
Edward	Mohler	
Carl	Muller	Tucker Ellis LLP
Colleen	Murnane	Frantz Ward LLP
Steven	Nord	Offutt Nord Ashworth, LLC
Chelsie	Palecek	Sutter O'Connell
Peter	Schmid	Rolfes Henry Co., LPA
Quinn	Schmiege	Gallagher Sharp
Abbey	Scholl	Nationwide Insurance
David	Smith	Mazanec, Raskin & Ryder, Co. L.P.A.
Kelli	Stiles	Nationwide Insurance
Gail	Storck	Nationwide Insurance
Jennifer	Turk	Benesch, Friedlander, Coplan & Aronoff, LLP
Tracey	Turnbull	Porter Wright
Kristin	Wedell	Dickie McCamey

Call for Diversity Scholarship Applications

The OACTA Foundation Law Student Diversity Scholarship is open to incoming second and third-year African American, Hispanic, Asian, Pan Asian and Native American students enrolled at Ohio law schools. Incoming second and third-year female law students enrolled at Ohio law schools are also eligible regardless of race or ethnicity. Other criteria for the scholarship include: Academic achievement in law school; Professional interest in civil defense practice; and Service to community and to the cause of diversity.



Up to two scholarships in the amount of \$2,500 each will be awarded to successful applicants. Applicants are required to submit an application, law school transcript and a cover letter addressing the following: academic, personal and professional accomplishments, and why they should be selected as a recipient of the scholarship. Applicants may submit up to three letters of recommendation.

The completed application and all other requested material must be received by **April 20, 2018**. Winners will be announced in June. Scholarship recipients will be recognized at the OACTA Annual Meeting in November.

OACTA members (and their firms or companies) are asked to consider making a contribution to the OACTA Foundation which funds this scholarship. The 2018 dues renewal forms and membership applications will include an option for a voluntary contribution. As a member of OACTA, we ask that you consider supporting this worthwhile initiative. Thank you, in advance, for your support.

OACTA believes that a diverse membership makes us a stronger organization. We encourage diversity in all aspects of our activities and are committed to nurturing a culture that supports and promotes diversity.

[Download the Diversity Scholarship Application](#)

[Complete the Diversity Scholarship Application Online](#)

8th Annual Update of Take-Home Asbestos Duty Decisions

2017 Rulings Highlight Litigation Landscape

By: Carter E. Strang, Karen E. Ross, and Giuseppe W. Pappalardo of Tucker Ellis LLP

This 8th Annual Update of Take-Home Asbestos Duty Decisions provides a state-by-state review of important rulings regarding the duty owed, if any, by premises owners, employers, product manufacturers and suppliers, and contractors to protect against take-home asbestos exposure.

2017 saw a number of take-home asbestos duty rulings of note, but it certainly did not match -- both in number and importance -- the 2016 take-home rulings, which included four decisions from state supreme courts, including California.^[i] Nevertheless, the 2017 rulings discussed in this article are important in providing further clarification on the law pertaining to take-home claims. Those and other rulings from prior years are summarized in this 8th Annual Update.

[Read more](#)



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Bodily Injury Insurance Coverage Trigger Theories

By: David J. Oberly

Why It Matters

Chronic traumatic encephalopathy resulting from sports-related concussions. Permanent psychological abuse resulting from sexual misconduct. Today, insurers and their legal counsel are facing a proliferation of long-tail bodily injury claims involving severe, long-term trauma which oftentimes becomes apparent only years or decades after the original incident or events giving rise to the injury have taken place. A significant issue in all types of long-tail claims pertains to resolving the question of at what particular point in time coverage is triggered for claims of "bodily injury." The issue of determining when bodily injury occurs is of critical concern to insurers, insureds, and third-party claimants because an insurance policy's coverage is triggered only if the injury "occurs" during the policy period. Known as "coverage triggers," several commonly employed theories concerning when bodily injury is deemed to have occurred are utilized in connection with long-tail bodily injury claims that extend over multiple policy periods. The same injury may be covered by multiple insurance contracts, or no insurance contracts at all, based on the particular coverage trigger utilized by the jurisdiction where the claim or lawsuit is venued. Consequently, determining when an injury is said to have occurred represents one of the most vigorously debated and fiercely litigated issues in all of insurance coverage litigation.

[Read more](#)

Insurance Coverage Committee Update

2018 Insurance Coverage Committee Update

By: Michael M. Neltner, Insurance Coverage Committee Chair

The following cases represent the more relevant insurance coverage cases decided by the Ohio Supreme Court, lower state appellate courts, and federal courts applying Ohio law in late 2016/early 2017. Many thanks to Megan Faust of Roetzel & Andress, William H. Falin of Moscarino & Treu LLP, Dawn R. Bonnett of Grange Insurance, and Gerald V. Southard of Rolfes Henry Co., LPA for assisting with these summaries.

[Read more](#)

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Business & Commercial Litigation Committee Update

Retroactive Insurance Coverage for Construction Defects?

Ohio's highest court declines to answer

By: Christopher J. Dutton of Porter Wright Morris & Arthur, LLP and Andrew Vollmar of Bruns, Connell Vollmar & Armstrong, LLC

"When you have to make a choice and don't make it, that is in itself a choice." -William James.

In *Lightning Rod v Southworth*, the Ohio Supreme Court declined to answer an important question impacting both the construction and insurance industries. Specifically, can a construction defect "occurring" before a CGL policy goes into effect, trigger coverage when some of the damages manifest during the policy period? For the time being, the Supreme Court's answer to this question will have to wait. And while several appellate courts have weighed in, the appellate court decisions provide no clear insight to litigants involved in a construction defect case.

[Read more](#)



Professional Liability Committee Update

Practice Pointers for Experts in Legal Malpractice Cases

By: Joseph Borchelt, Professional Liability Committee Chair

Let's face it - attorneys within the plaintiffs' bar are not clamoring to be known as experts with respect to plaintiff legal malpractice claims. No one wants to be known as the lawyer who sues lawyers (with a few exceptions of course). As such, often times legal malpractice cases are either litigated by pro se parties, or practitioners who are not experienced in litigating legal malpractice cases. Because this area of law has some tricky technical components, such as the proper use of expert testimony, it is a breeding ground for missteps by unwary adversaries. Below, we will briefly examine some tips that can be utilized in the context of legal malpractice claims when the opposition is unskilled with

respect to expert practice in these cases.

[Read more](#)



Governmental Liability Committee Update

"Will the Definition of Obstruction, as it Relates to Immunity, be Expanded Allowing Greater Exceptions Under R.C. 2744.02?"

By: David Smith, Mazanec, Raskin & Ryder, Co. L.P.A.

In 2003 the General Assembly amended R.C. 2744 in an effort to specifically narrow the definition of "public road" to exclude berms, shoulders, rights-of-way, and non-mandatory traffic control devices. Additionally, the 2003 amendments altered the language of R.C. 2744.02(B)(3) to provide that political subdivisions may be liable for failure to remove an "obstruction" from the public roadway. This changed 2744 to reflect the General Assembly's desire to narrow the exception to immunity in R.C. 2744.02(B)(3) that previously reflected that the exception applied to failures to keep a public road free from "nuisance." Since 2003, the immunity exception found in R.C. 2744.02(B)(3) has stated: "political subdivisions are liable for injury death or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from the public roads..."

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Job Postings on the OACTA Website

If you are looking for a position within the civil defense practice,

you've come to the right place! All listings appear for 90 days or until the position has been filled, whichever is lesser, and will be listed in at least one issue of The Update. Be sure to notify the OACTA office if the position has been filled prior to the end of the 90 day period.

Job postings cost is \$150 for members and \$250 for non-members.

[Submit a Job Posting](#)

Case Victories Needed!

OACTA members - send summaries of your significant case victories to David Oberly, OACTA Social Media & Website Chair, at djoberly@mdwecg.com for inclusion on OACTA's new "Significant Case Victories" webpage and announcements on social media. Those received will be posted on our [website](#).

Upcoming DRI Events

DRI Webinar

What is the GDPR?: How the European Union's New General Data Protection Regulation Affects You and Your Clients

[Learn more about GDPR](#)

[View the Webinar Brochure](#)

Marijuana Law Seminar

Litigation, Risk Mitigation, and Policy Updates - Challenges and Strategies

[Learn more](#)

Consider a Donation to the OACTA Foundation!

The OACTA Foundation (a 501(c)(3) organization) is organized exclusively for charitable and educational purpose. The Foundation funds projects consistent with the mission of OACTA, such as the annual OACTA Diversity Scholarship Program and supporting the National Foundation for Judicial Excellence (NFJE). Contributions made to The OACTA Foundation are tax deductible to the extent allowed by law. [DONATE TO THE OACTA FOUNDATION TODAY.](#)



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OACTA Social Media Opportunity

We would like to feature OACTA members in our social media! To be a featured member, send the following to OACTA@AssnOffices.com:

- Your name
- Position
- Link to your online biography
- In 2 sentences or less, complete the following: How has OACTA membership benefited you?

Nominate an OACTA member to be featured! Send the member name and email address to OACTA@AssnOffices.com and we will follow up to request the information needed.

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Member News



On February 1, during the DRI Women in the Law (WitL) Seminar, Amy Mass was presented with the Mary Massaron Award for the Advancement of Women in the Legal Profession. Named for past DRI president Mary Massaron(2012-2013)-at the time just the second woman president in DRI's history-the award is presented each year during the WitL Seminar's Awards Luncheon to a DRI member who has demonstrated qualities that include a high regard for, and behavior that illustrates commitment to, inclusion of women within the institution; a dedication and commitment to advocating the inclusion and promotion of women in the legal profession through activity that has a visible, tangible, or measurable impact on the perception of, attitude toward, respect for, and treatment of women; leadership in the development of contemporary measures to fight gender discrimination and prejudice in the profession; and a commitment to fostering women's initiatives and actively promoting positive mentoring relationships with other women in the legal profession.

[Read more](#)

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