

News & Practice Pointers from OACTA

Spring 2017

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PRESIDENT'S MESSAGE

By: Brian D. Kerns
2017 OACTA President

Birds are chirping, the last snows of winter are behind us, the grass needs cutting, golf and baseball and soccer and track meets and garden planting and graduations - all those other Spring things are finally upon us. Spring is about to, well.... spring forth. OACTA springs into our next 50 years, by offering all of the great programs and projects we've offered for many years, but also by taking a fresh look at how we move boldly into our next 50.



Always conscious of issues relating to our membership, your Board and executive officers met recently to discuss how to engage old and new constituencies going forward. In this respect, as your President I have asked representatives from a number of insurance carriers to join a Claims Industry Advisory Committee in 2017. This committee will include claims executives and managers from many of Ohio's top insurers, who will come together to discuss and evaluate how we at OACTA can better engage and meet the needs of this industry constituency many of us so loyally serve. Representatives of at least 10 different insurance companies will have their first meeting during our upcoming INSURANCE COVERAGE SEMINAR on May 12 at the Westfield Insurance Company in Westfield Center, Ohio. They will be discussing and making recommendations to the OACTA Board about how we can better engage our industry brethren in coming years. If you haven't registered for this great CLE Insurance coverage program on May 12, please do so immediately -- slots are filling up!! This seminar will provide outstanding insights from a number of the best coverage lawyers in the State. HURRY, REGISTER NOW, before registration closes, at this [link](#).

SUBMIT Articles to include in The Update to:

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

Upcoming Events

Mark your Calendars! 2017 Calendar of Events

May 12th

Insurance Coverage Seminar
Westfield Insurance
Westfield, OH
[Register Now!](#)

June 23rd

Construction Litigation/Business & Commercial Litigation Seminar
Quest Conference Center
Columbus, OH

August 25th

Appellate Advocacy Seminar
Grange Insurance
Columbus, OH

September 5th

OACTA Golf Outing
Pinnacle Golf Club
Grove City, OH

November 16th - 17th

OACTA Annual Meeting
Hilton Cleveland
Downtown
Cleveland, OH

Ohio Association of Civil Trial Attorneys

17 S. High St.
Suite 200
Columbus, OH 43215
P. 614.228.4727

Also this Spring, Exponent, one of OACTA's consistent sponsors, has offered free CLE programming in three great cities on consecutive dates. On April 11 at Ulmer Berne in Cincinnati; April 12 at Porter Write Morris and Arthur in Columbus and on April 13 at Tucker Ellis in Cleveland. Each of these events offered 1.0hr. of CLE to our members.

In other news, our Board recently met at the new offices of SEA, Ltd, in Columbus, Ohio to conduct our normal bi-monthly Board meeting and to explore ideas of how we can continue to grow the organization in positive ways and continue to expand our membership base. As you know, our Quarterly was published recently by the Medical Negligence Committee. Our upcoming Quarterly offerings will include editions on Business and Commercial Litigation, Personal Injury and Professional Liability. Our upcoming CLE seminar offerings include Construction Litigation and Business and Commercial Litigation on June 23 at Quest in Columbus, and the Appellate Law Seminar coming on August 25 at the home office of Grange Insurance Company in Columbus.

And although it's early, please mark your calendar to join us at our Annual Meeting, on November 16 and 17 at the brand new Hilton Cleveland Downtown, in what you may find to be a 'brand new' Cleveland.

All in all, we at OACTA are excited for the year ahead and hope you will take full advantage of all the opportunities for engagement in this wonderful organization--- your organization-- - the one committed to providing "resources and education to attorneys and others dedicated to the defense of civil actions in Ohio.

Call for Diversity Scholarship Applications

OACTA's annual Law Student Diversity Scholarship program 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 the community and to the cause of diversity.



Up to three (3) scholarships in the amount of \$1,250 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.

F. 614.221.1989
oacta@assnoffices.com
www.oacta.org

**The Update Spring
Issue deadline is
July 1, 2017**

**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](mailto:Tony.Brown@oacta.org)
or
[Ian Mitchell](mailto:Ian.Mitchell@oacta.org)

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The completed application and all other requested material must be received by April 21, 2017. Late or incomplete applications will not be considered.

Winners will be announced in June and recognized at the OACTA Annual Meeting in November.

[Download Scholarship Application](#)

**Lunch & Learn: "Working with Experts"
*Sponsored by: Exponent***

A special thank you to Exponent, Ulmer & Berne LLP, Porter, Wright, Morris & Arthur LLP, and Tucker Ellis LLP for sponsoring and hosting the Lunch & Learn seminars in Cincinnati, Columbus, and Cleveland this week.

Insurance Coverage Seminar Sure To Be A Big Hit

By: Michael M. Neltner, Insurance Coverage Committee Chair

The OACTA Insurance Coverage Seminar is a biennial event that always draws 80 - 100 insurance Claims Executives and the top Coverage Lawyers from around the State. This year, however, it looks to be even bigger and better since OACTA is staging a NEVER-BEFORE SPECIAL OFFER: Qualifying Insurance Executives and In-House Attorneys can attend this year's Seminar at no cost!! So make sure you register ahead to reserve your spot before we are sold out!!

The purpose of this once-ever offer, according to OACTA President Brian Kerns, is to promote the collegiality between OACTA's principal membership (defense attorneys) and those who hire defense attorneys (Insurance Executives and In-House Counsel) and to foster a lively discussion about "hot topics" being faced by defense lawyers and their clients today. Things like CTE claims (football concussion syndrome), Americans with Disabilities Act ("ADA") and Telephone Consumer Protection Act ("TCPA") claims, and Risk Transfer will be looked at perhaps in a way you never imagined and in more depth and detail than you thought possible. In addition, recurring issues like insurance "Bad Faith," Progressive Injury claims, and Intentional Acts will be discussed with expert practitioners who have tried hundreds of these cases in Ohio courts.

So please come and join the party. Your voice will be heard and you will have the chance to learn perhaps more than at any other seminar you have ever attended. We are all "experts" in our own right and we look forward to seeing (and learning from) YOU at this event.

The OACTA Insurance Coverage Seminar will be held at the beautiful Westfield Blair Conference Center (overlooking the golf course!!), 9079 S. Leroy Road, Westfield Center, Ohio, on Friday May 12, 2017, from 9-4. For more information, please see the [brochure](#) or look us up at www.OACTA.org.

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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A Tale of Three Cities My Summer of 2016 Tour of Ohio

By: T. Andrew Vollmar

About a year and a half ago, Candi Taggart and I met for breakfast to discuss the mission of OACTA's business and commercial litigation committee, which up to that point had proved to be rather elusive. For those of you who know Candi, you know that she represents the very best of our profession—the consummate professional who can only be described in the superlative for her technical abilities, as well as her reputation as a true professional. Who better to serve with as co-chair of OACTA's business and commercial litigation committee?

But Candi and I faced a difficult question—what on earth are we supposed to do? Our dilemma was partially rooted in the committee's often used but poorly defined moniker, which freely leaps from the tongues of lawyers, while almost never actually defining a style of cases, or for that matter a group of attorneys with common characteristics, interests or values. These terms, "business and commercial litigation" are applied to just about any civil litigation, leaving most any lawyer riding the circuit with the right to call him or herself a "commercial litigation attorney," without fear of such a boast being proved untrue. Unlike OACTA's other substantive law committees, whose names immediately reveal the subject on which its members can expect to receive substantive learning, our committee's name and this broad

sphere of cases and matters labeled "commercial litigation" prevents a coherent educational program focused on a particular subject.

[Read more](#)

DRI Update

By: Anne Marie Sferra, DRI State Representative

For those of you looking to travel outside of Ohio for your CLE, DRI has great seminars planned this spring in some fun cities. Below are two that I thought may be of interest to OACTA members. Please share this information with your colleagues.

Appellate Advocacy - May 11 -12 - New Orleans

This program features presentations on the effect of various technological advances on brief writing, certification of issues to a state court, and the role of insurance on appeal. The program also offers guidance on brief writing and preparation for argument in the context of en banc review and discusses strategic considerations when the government is a party to your appeal. In one session, a panel of in-house counsel will offer insight on the appeal process and effective management of appeals. There will also be a live mock oral argument in the federal courthouse. In short, a good time will be had by all!

Employment Law - May 17 - 19 - Nashville

This program is a great educational and networking event for management-side labor and employment attorneys, in-house counsel, human resources professionals, and EPLI representatives.

[Read more](#)

Committee Updates

Awards Committee

By: Greg O'Brien, Awards Committee Chair

There are many, many OACTA members deserving of recognition for the contributions they've made to the organization and the profession recently and in years past. The Awards Committee will meet over the summer to consider nominations and make recommendations to the board as to who it should formally recognize at the Awards Luncheon held during the Annual Meeting.

Please share with the committee the names of those members that you think should be on our list when we convene in July. In particular, we are looking for nominations for the following awards:

Excellence in Advocacy
Distinguished Contributions to the Profession
Respected Advocate
Young Lawyer

The criteria for each of the above awards, and a list of past recipients, is posted on the OACTA website. You can submit nominations to the committee at gobrien@cavitch.com or to Debbie Nunner at debbie@assnoffices.com.

Insurance Coverage Committee

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 and Monica Frantz of Weston Hurd, LLP for assisting with these summaries.

Ohio Supreme Court

1. Where an Insurance Contract Required Independent Corroborative Evidence But Left Room for Multiple Interpretations, Insured's own Testimony plus Evidence from the Police Report was Enough to Recover Uninsured Motorist Benefits

(Smith v. Erie Ins. Co., 148 Ohio St. 3d 192, Nov. 16, 2016)

Scott Smith was traveling on Plasterbed Road in Ottawa County, Ohio, when an unidentified vehicle crossed his path of travel, causing Smith to swerve his pickup truck off the road into several trees. With the driver of the offending vehicle having fled the scene of the no-contact accident, Smith called 9-1-1 and described to dispatch what had caused the accident.

[Read more](#)

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OACTA's Recruit 1 Campaign

OACTA's Recruit 1 Campaign resulted in 6 new members!

OACTA members who recruited new members were entered into a grand prize drawing. The grand prize drawing will be held at the OACTA Insurance Coverage Seminar on May 12th. *Thank you to Veritext Legal Solutions for donating the grand prize: an Apple Watch.*

Welcome to the following new members who participated in the Recruit 1 Campaign:

Charles Weinman, Ohio Mutual Insurance Group

Chad Readler

Christine Farmer, Young & Alexander Co., L.P.A

Trent Thacker, Curry, Roby & Mulvey Co., LLC

Sarah Benoit, Ulmer & Berne LLP

Robin Richards, Motorists Mutual Insurance Co.

Corporate Representative Deposition Update -- Traps Remain for the Unwary

By: Carter E. Strang and Giuseppe W. Pappalardo

Federal Rule of Civil Procedure 30(b)(6) is the vehicle for taking depositions of corporate representatives in civil cases. Such depositions have a number of distinct characteristics and contain traps for the unwary. Unfamiliarity with the rule's provisions can prove disastrous for a noticed corporation and a bonanza for the noticing party.

This article provides an overview of notice, selection, preparation issues in corporate representative depositions -- including the role of in-house counsel - in the context of the recent proportionality amendment to Rule 26(1)(b).

[Read more](#)

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Plugging The Holes: Scope of Discoverability of the Insurer's Claim File in Ohio Bad Faith Litigation

By: David J. Oberly

I. Introduction

Insurance bad faith lawsuits involve some of the highest stakes in all of civil litigation. In this particular type of action, more so than in other flavors of civil litigation, a plaintiff will attempt to paint the defendant insurance carrier as some sort of "big, evil, money-hungry corporation" - a strategic move designed to entice juries to award significant punitive damages awards for extra-

contractual liability. If successful, these awards can reach well beyond the seven-figure mark. In the pursuit of this strategy, insureds will endeavor to illustrate the carrier's improper conduct through various forms of extrinsic evidence. As a result, the insurer's claim file-which shows the details of the insurer's handling of the claim-almost always becomes the most coveted prize that a policyholder seeks to obtain during discovery in a bad faith suit. Unfortunately for insurers, the scope of allowable discovery in bad faith litigation has proliferated greatly in recent years, with courts now willing to extend exceptions to the attorney-client privilege and work product doctrine to allow policyholders to acquire certain portions of the insurer's claim file documents. However, all is not lost for insurance carriers, as several strategies are available to minimize the risk that an insured will be able to utilize damaging claim file materials in coverage litigation to support claims of bad faith. Moreover, when approached properly, the documentation contained in the claim file can be employed to support the insurer's position that it exercised good faith in the handling and payment of its insured's claim.

[Read 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.](#)

Learning the High Art of Amicus Brief Writing

Introduction by: Ben Sasse and Jennifer Nordstrom, Amicus Committee Co-chairs

One important way that OACTA promotes fairness in Ohio's civil justice system is by filing amicus briefs in cases of interest to its members. By rule, any party can file an amicus brief with the Ohio Supreme Court without seeking leave of court. Through the hard work of OACTA members who write these briefs, OACTA has participated in the majority of the most significant cases for civil defense practitioners during the past 15 years. In an excellent article written for DRI and republished here with permission, Lawrence Ebner of Capital Appellate Advocacy PLLC reminds us that amicus briefs differ from briefs written for a party in several important ways. While written with an eye towards filing amicus briefs in the United States Supreme Court, the guidance Mr. Ebner offers - including reminders to keep the brief short, avoid getting bogged down by case-specific facts, and not repeat the supported party's arguments - applies equally to Ohio Supreme Court amicus briefs. His article is a valuable resource to consult for your next amicus brief.

[Read this article here](#)



Member News

Pollock Earns Ohio State Bar Specialist Certification in Labor and Employment Law

March 22, 2017

Mazanec, Raskin & Ryder, Co., L.P.A. (MRR), is proud to announce that Columbus attorney Stacy V. Pollock is now an Ohio Bar Association Certified Specialist in Labor and Employment Law. This certification marks Ms. Pollock as one of a small number of attorneys in the state of Ohio to have earned this distinction.



[Finish reading this article here](#)

Garvey Shearer Nordstrom PSC is proud to announce the following attorneys, who were named Super Lawyers® and Rising Star® for 2017:

Jennifer K. Nordstrom
David A. Shearer
David W. Zahniser
Jason E. Abeln

Congratulations also goes to Jennifer K. Nordstrom. In addition to being named Ohio Super Lawyers®, she was also named one of the Top 25 Women Super Lawyers in Cincinnati.

OACTA MEMBERS: Please send us notable summary judgment, appellate, arbitration or trial victories so we can share your successes with the membership in the next issue of The Update!

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