

FALL 2013

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Register Now!

**2013 OACTA
Annual Meeting
November 14th & 15th**
Wyndham Playhouse
Cleveland, Ohio
[REGISTER NOW!](#)

**Submit Articles
to the
Newsletter
Committee:**

[Joe Borchelt](#)

[Tony Brown](#)

President's Message

FALL - THE SEASON OF EXCITEMENT

Fall is definitely my favorite season. Glorious colors. A brisk nip in the air. The crunch of leaves. Pumpkin pie. And-oh, yes-football! Fall sure gets my juices going!



Fall is peak activity season for OACTA, as well. We hope to see many of you at the DRI Annual Meeting in Chicago. But we're especially excited about the OACTA Annual Meeting in Cleveland on November 14 and 15, headlined by fellow insurance defense litigator and NFL referee Ed Hochuli, and also featuring Ohio Supreme Court Justices Terrence O'Donnell and Sharon Kennedy, Cuyahoga County judges Richard McMonagle and John P. O'Donnell, and other regionally and nationally known speakers. Check out the line-up and register to attend at [OACTA.org](#). And in addition to enjoying great CLE, you can join us in recognizing the accomplishments of numerous members and fellow Ohio attorneys, listed in this edition.

[Read More...](#)

Serving you by serving OACTA,

Kurt D. Anderson, President

Send a Member Request
oacta@assnoffices.com

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www.oacta.org

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NOMINATE SOMEONE FOR THE MEMBER SPOTLIGHT

OACTA is always looking for new nominations for the "Member Spotlight" section of the Update. If you know of anyone who exemplifies both professionalism in the practice of law and has outside activities which would be of interest to the OACTA membership, please submit a nomination via email to:

Tony Brown
or
Joe Borchelt

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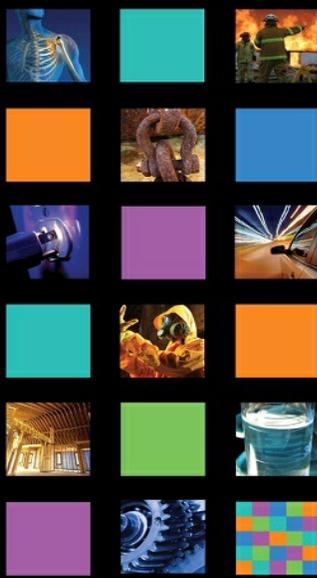
Young Lawyers Committee Update

Thank you to all members and non-members who joined us for the Summer Happy Hour Series! If you have ideas for next year, please be sure to share them with a member of the Young Lawyer committee. Special thanks to S-E-A for sponsoring all of the events.

As a reminder, OACTA provides a **free membership to law students**, a **reduced-dues membership for new attorneys** (admitted to practice 5 years or less), and a **one-year free membership to all DRI members who have not previously been a member of OACTA**.

Please encourage any law students and young lawyers you know to join OACTA. Young lawyers are defined as an attorney who has practiced 10 years or less and/or is 40 years old or younger. Feel free to have any potential new member contact Natalie Wais or Mary Pisciotta with any questions on how to get involved. Also, if your firm or an organization that you are involved with wants an OACTA Young Lawyers Committee member to attend an event and explain the benefits of being an OACTA member, please let us know.

Natalie M. E. Wais
Young & Alexander Co., L.P.A.



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OACTA Award Recipients Announced

OACTA is pleased to present the following awards during the Awards Luncheon at the OACTA Annual Meeting on Thursday November 14th, 12:00 - 1:30 pm, at the Wyndham - Cleveland:

Excellence in Advocacy Award
Irene C. Keyse-Walker, Esq.

Respected Advocate Award
Eric Kennedy, Esq.

Distinguished Contributions to the Profession Award
Stephen V. Freeze, Esq.

Distinguished Contributions to the Community Award
Carolyn A. Taggart, Esq.

Public Service Award
Evelyn Lundberg Stratton
Retired justice, Ohio Supreme Court

Lifetime Achievement Award
Ralph F. Dublikar, Esq.

Outstanding Advocacy Award
Richard M. Garner, Esq.

Frank Seth Hurd Member of the Year Award
James N. Kline, Esq.

OACTA Committee Chair of the Year Award
John J. Garvey, III, Esq.

Join us in recognizing these individuals! [Click here](#) to register for the OACTA Annual Meeting. Your meeting registration includes the Awards Luncheon. Please note that you may register to attend the Award Luncheon only. For more information about these awards, visit the OACTA website: www.OACTA.org.

OACTA congratulates these outstanding individuals on their success!!

Legal Malpractice Defense Tips: The Requirement of Expert Testimony to Prove Causation

[by Michael Mahon](#)

The use, or non-use as the case may be, of experts in legal malpractice litigation can be a valuable tool. Legal malpractice plaintiffs are constantly attempting to eek out every penny from the defendants while keeping costs at a minimum. One way of minimizing cost is by attempting to "shoestring" the litigation by dispensing with expert testimony to prove their case. Plaintiffs traditionally argued that expert testimony was unnecessary given that the blatant nature of the error was within the province of a lay person, and that expert testimony was simply not required under Ohio law on the element of proximate cause. As such, if the defendant attorney failed to file a claim within the statute of limitations, for example, but the ability to prove damages was nevertheless suspect, Plaintiffs were formerly able to skate past the summary judgment stage without an expert. As will be examined below, based upon a recent 6th District decision, legal malpractice plaintiffs must be prepared to present expert testimony on both the standard of care element of their case, *as well as* proximate cause. It is no longer sufficient to state that the defendant-attorney blew the statute of limitations; the plaintiff must still offer an expert opinion that the error proximately caused damages.



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Register Now To Attend The 2013 OACTA Annual Meeting

Come join us at the Wyndham Cleveland at Playhouse Square for this year's Annual Meeting! Located in downtown Cleveland, the Wyndham Cleveland is easily accessible and centrally located with easy access to all downtown Cleveland attractions.

This year's Annual Meeting is headlined by NFL referee and Phoenix insurance defense litigator Ed Hochuli!

Ed will share his experiences and insights into creating and balancing two highly successful careers. Other presentations will feature Supreme Court Justices Terrence O'Donnell and Sharon Kennedy, Cuyahoga County Common Pleas Judges Richard McMonagle and John O'Donnell, and other nationally and locally prominent speakers. Up to 8.5 hours of CLE will be available, including all required Substance Abuse, Professionalism and Ethics credits.

Networking opportunities include a Thursday evening reception at the Wyndham Cleveland followed by dining opportunities around downtown Cleveland. Additionally, the OACTA Annual Business Meeting and Awards Luncheon will update you on OACTA's activities and recognize the achievements of your OACTA colleagues.

[Register NOW](#) to attend this year's OACTA Annual Meeting!

This is one annual meeting you will not want to miss!

The Theory of Everything

By: John C. Cahill

This essay is tailored to trial lawyering in the courtroom. I will be addressing the why we do what we do of trial lawyering. The strategy of trial lawyering includes the language that we use and questions that we ask. How often have we heard an advocate make the statement: "What, if anything, did you do next?" Why do we speak this way? We use this type of language because of insecurity, wanting to sound like a lawyer, and hoping that if there is an error, the jury will ignore the error due to the advocate's professional jargon. If this is not the way, how do we do it?

[Read More](#)

2013 OACTA Golf Outing

NEW RECORDS SET AT PINNACLE GOLF CLUB DURING 5TH ANNUAL OACTA GOLF OUTING

By: John J. Garvey III

Smashing their previous best of 62 with a 60, the semi-professional "foursome" of Hilary Taylor, Jason Baker, Josh Bills, Ken Corwin, and Doug Holthus humbled the beautiful Pinnacle Golf Club course in Grove City, Ohio, once again during the OACTA Scramble on September 3, 2013. Dividing their fabulous prizes for four will prove more challenging to them than the course. The winning "quartet" narrowly edged the regulation quartet of Brooks Cannon, Todd Zimmerman, Brad Sherman, and Mike Ferguson, who carded a 63. A hastily called vote to enshrine Fun above Substance passed by a wide margin. Next year the sextet of OACTA members Woods, Nicholas, Stinson, Couples, Singh, and Els vowed to shoot a 43.

[Read More..](#)



John Garvey & David Orlandini



2013 Winning Team



Marc Williams & John Garvey

Member News

OACTA congratulates member Adam E. Carr of the Carr Law Office, LLC, in Hudson, Ohio. Mr. Carr's appellate win was featured in the July 17 *The Voice of the Defense Bar*, DRI's national electronic newsletter. Mr. Carr successfully convinced the Ninth District Court of Appeals to overturn an attorney fees award by the Barberton Municipal Court to a plaintiff based upon answers to requests for admission by prior defense counsel. At the underlying trial in a motor vehicle accident

case, the defense admitted negligence, but contested proximate cause and damages. The defendant did not appear at trial. The jury awarded total damages of \$7,131.31.

[read more](#)

TUCKER ELLIS ATTORNEYS PEN 2013 EDITION OF *OHIO INSURANCE COVERAGE*

Tucker Ellis LLP is proud to announce that attorneys in the firm's Insurance Group have authored the 2013 edition of *Ohio Insurance Coverage*, published by Thomson Reuters and released this month. A useful reference for attorneys representing both insurers and insureds, this book is the definitive source on insurance coverage in its jurisdiction.

OACTA member, Kevin Young, collaborated on this comprehensive text, which brings together numerous decisions interpreting the principal provisions of the widely used Commercial General Liability insurance policy and also generally discusses the law of insurance coverage in Ohio.

Ohio Insurance Coverage was originally authored by retired Tucker Ellis LLP partner Ed Duncan in 2008. The book is updated and republished annually.

"We're very grateful and indebted to Ed for his years of dedication to insurance law and to authoring the initial volumes of *Ohio Insurance Coverage*," said Mr. Young. "We look forward to continuing the work in the years to come."

Ohio Insurance Coverage is available in print through Thomson Reuters as well as electronically on Westlaw®.

POLING LAW DEFENSE VERDICT IN ORANGE COUNTY, CALIFORNIA

Brant Poling and Doug Holthus of Poling Law recently successfully defended suit, in an action venued in the Superior Court of California (Orange County, Central District), brought against a California-based, long-term care/residential psychiatric care facility. Plaintiff, a former resident of Defendant's facility, alleged she had been raped by another resident. Plaintiff's pre-trial demand was Ten Million Dollars. Following a three-plus-week trial, and after nearly four days of deliberation, the jury returned a defense verdict.

CARTER STRANG HEADS SCHOLARSHIP PROGRAM FOR CLEVELAND SCHOOLS

OACTA member Carter Strang just completed his term as President of the Cleveland Metropolitan Bar Association. As CMBA president, Carter launched the Louis Stokes Scholars Program, which provides paid summer legal internships for college students interested in a legal career who are graduates of the Cleveland and East Cleveland Municipal School



Districts. The Stokes Scholars Program recently received the Expys Best New Internship Award and the NABE LexisNexis Community and Educational Outreach Award.

You can also check out Carter's article "Light Candles Rather Than Curse the Darkness", which was published in the DRI Diversity Insider. The article provides a "tool kit" for bar association and law firm pipeline diversity and inclusion programs to increase diversity in our profession.

OACTA was pleased to nominate Carter for the 2013 DRI Community Service Award and we are happy to announce he was selected. Congratulations Carter on the well-deserved recognition!

6th DISTRICT COURT OF APPEALS DECISION

On August 16, 2013, the Sixth District Court of Appeals agreed with Kurt Anderson and the firm of Davis & Young, affirming summary judgment granted to Erie County and its contractor, Herbst Excavating, LLC and finding that the county was entitled to immunity and the contractor was not negligent in the placement of barricades and signs at a bridge excavation. The decision, *Semprich v. County of Erie, Ohio*, 6th Dist. No. E-12-070, 2013-Ohio-3561, was a rare instance in which the court agreed that the plaintiff was so negligent-by having a BAC of .265, having also consumed marijuana, and disregarding existing barricades, "Road Closed" signs, and surrounding darkness-that any reasonable juror would conclude that she caused her own injuries by walking through the construction site and falling into the creek.

Did you miss the Exponent-sponsored free webinars for OACTA memers?

You can view the recorded webinars on the [members-only side of the OACTA website!](#)

Topics include:

"The Distracted Driver: Science, Application, Investigation"

"When Things go BOOM in the Night, Investigating Fires & Explosions"

"Introduction to Accident Investigation, Accident Reconstruction, and the Biomechanics of Motor Vehicle Accidents"

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