

*News & Practice Pointers from OACTA*

Spring 2019

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**PRESIDENT'S MESSAGE**

**By: James N. Kline  
2019 OACTA President**



As the temperatures slowly climb and the flowers and golfers are beginning to bloom, I want to send my greetings to all of the OACTA members, and even non-members, reading this. Even as we look forward to the spring holidays, graduations, kids home from school, and summer vacation, there is also plenty to look forward to from OACTA. In fact, as I write this, we are virtually on the eve of the Insurance Coverage Seminar scheduled for Friday, April 12th at Grange Insurance in Columbus, Ohio. Each year, this CLE, organized by Insurance Coverage Committee Chairman, Mike Neltner, gets better and better. It brings together not only OACTA member attorneys, but also now includes plenty of claims professionals who are also members of OACTA, representing the robust insurance industry that calls Ohio a home.

One of the initiatives undertaken by OACTA this year will be the availability of CLE on-demand. While nothing can match the experience, interaction, and camaraderie of attending a CLE event live, the great insights and learning are just too valuable to limit to a single presentation on a single day, which OACTA recognizes not all of its members can necessarily attend. As a result, portions of the CLE will be made available via our website. So, if you did not have an opportunity to attend in person, we strongly encourage you to avail yourself of this valuable new benefit. Additional on-demand CLEs are contemplated in the coming year and we hope that you will take advantage of this if you cannot attend in person.

I have to admit, I am also extremely excited about a number of initiatives and ideas for 2019, many of which are intended to expand OACTA's community involvement and efforts to improve not only the provision of legal services by civil defense counsel, but also by members of the legal profession as a whole. We are looking at an expanded role for our "Diversity Committee," now called the "Inclusion & Equity Committee" (which is hinted at by the new name). We are also undertaking efforts to improve on the ethical requirements for attorneys in Ohio to assure that attorneys of all backgrounds and experiences are celebrated and valued.

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**SUBMIT Articles to include in The Update to:**

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

**Upcoming Events**

**Mark your Calendars!**

**June 21st**

Litigation & Trial Skills Workshop  
Capital University  
Columbus, OH

**July/August**

OACTA Happy Hours Series

**September 3rd**

OACTA Foundation Annual Golf Outing  
Pinnacle Golf Club  
Grove City, OH

**November 21-22nd**

OACTA Annual Meeting  
Hilton Cleveland  
Downtown  
Cleveland, OH

[Details](#)

**Ohio Association of Civil Trial Attorneys**

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[www.oacta.org](http://www.oacta.org)

**The Update Summer**

Make sure you sharpen up those golf skills, reach out to clients and colleagues, and get your foursomes ready for the OACTA golf outing set for Tuesday, September 3, which will be held at our traditional site, the spectacular Pinnacle Golf Club outside Columbus. The proceeds, of course, benefit OACTA's contribution to the National Foundation for Judicial Excellence, as well as expanding the resources for our own Inclusion & Equity Scholarship, which we hope to build and expand. I also encourage you to keep an eye out for information on the annual meeting, which is scheduled for November 21st and 22nd at the Hilton Cleveland in Cleveland, Ohio, where we will combine high quality, exciting, and interesting speakers and CLEs, with a hefty helping of fun. As President, I also want to encourage each and every member to contact me with any comments or initiatives they may have for improving OACTA, the defense of civil litigation, and the general provision of legal services in the State of Ohio, and any ways in which OACTA can assist with them. At the same time, if you are not on an OACTA Committee, plan to join one; there is a topic for every interest. And if you are on a committee already, please get involved. It makes the entire legal experience that much better for you and for all of us.

I hope you all have a wonderful spring, get to take some time to enjoy your families, and even take a little time away from the office. Once again, we look forward to an exciting and event-filled year at OACTA.

**Welcome New OACTA Members Since December!**

Lou	Antonelli	Oswald Companies
Elisabeth	Arko	Tucker Ellis LLP
James	Byrne	Law Office of John L. Antel - Grange House Counsel
Dustin	Calhoun	Ameritrust Group
Molly	Crabtree	Porter Wright
Holly	Facer	GEICO Staff Counsel
Scott	Failor	Nationwide Insurance
Norma	Gant	Nationwide Trial Division
Anthony	Graber	Young & Alexander Co., L.P.A.
Jay	Hanson	American Family Insurance Company
Martin	Hulthen	American Family Insurance
Christopher	Kakish	Oswald Companies
Erin	Poplar	Giardini, Poplar & Mason, LLC
Lindsey	Roberts	Bricker & Eckler LLP
Bryan	Smeenck	Bricker & Eckler LLP
Jayme	Smoot	Nationwide
Kris	Treu	Moscarino & Treu, LLP

**Renew Your OACTA Dues!**

If you have not already renewed your OACTA membership for 2019, renew today [here!](#)

**2019 Annual Meeting Information**

**Issue deadline is  
July 1, 2019**


**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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**Hotel Information**

Make your reservation today at the Hilton Cleveland Downtown through the OACTA room block and receive the group rate: \$169 single/double; \$194 triple; \$219 quad occupancy. To make your reservation click here to reserve online or call the Hilton at 216-413-5000, press option 1 and reference the 3-digit group code CTA. All guest rooms reserved in the block include complimentary internet and a 10% discount on self-parking. Room rates are available two days before and after the OACTA Annual Meeting. **Reservations must be made by Monday, October 28th to receive the group rate!**



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**Ever Popular Insurance Coverage Seminar was held at Grange on April 12**

*By: Michael M. Neltner, Insurance Coverage Committee Chair*

The OACTA Insurance Coverage Seminar is an annual event that always draws 80 - 100 insurance Claims Executives and the top Coverage Lawyers from around the State. This year was bigger and better than ever with 113 attendees for around the State and a healthy combination of coverage attorneys and insurance claims professionals from 12 different companies represented. In addition, we upgraded the content this year to include a 1.0 hour Ethics presentation which was taped for future use as online CLE.



Topics this year included coverage for #Me Too! Claims, the intriguing "Intentional Acts" Exclusion found in the commercial general liability policy, Cyber Coverage, the ever popular annual "Bad Faith Update," and tracking the life of a Coverage file from intake through discovery, summary judgment, and on to the Supreme Court by the litigators of perhaps the biggest case of the year -- Ohio Northern University v. Charles Construction Services, Inc., 2018-Ohio-4057.

Speakers included Melanie Irvin, Esq. of National Interstate Insurance Co., Richard M. Garner, Esq. and Lucas P. Baker, Esq. of Collins Roche Utley & Garner, LLC, Gregory E. O'Brien, Esq. of Cavitch Familo & Durkin Co., LPA, Steven D. Strang, Esq. and Rema A. Ina, Esq. of Gallagher Sharp, LLP, John G. Farnan, Esq. of Weston Hurd, LLP, and Kurt Anderson of Collins Roche Utley & Garner, LLC. MANY thanks to all of the speakers for their excellent presentations and expertise. Also, many thanks to Grange Insurance for being such a wonderful host for the Program.



## COMING SOON...

Missed the OACTA Insurance Coverage Seminar? Need additional CLE credits? OACTA will soon be offering online, on-demand CLE! Some of the presentations at the Insurance Coverage Seminar were recorded and will be available to you! Members will be notified when these on-demand CLE programs will be available!

## OACTA's Expert Witness Database

### Share Your Experts with OACTA

OACTA's Expert Witness Database is a comprehensive listing of plaintiff and defense expert witnesses supplied by your fellow OACTA members and OACTA sponsors. OACTA's Expert Witness Database has the expert witness information you need!

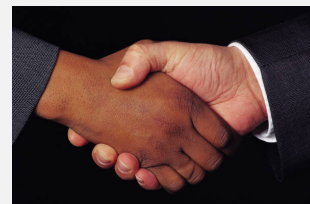
We need your help to maintain this MEMBERS-ONLY resource! OACTA members are encouraged to submit new experts and to notify OACTA of updated information about experts in the database.

[Submit an Expert](#)

[Search the Database](#)

## OACTA Announces the 2019 Law Student Inclusion & Equity Scholarship - Deadline Extended

The Ohio Association of Civil Trial Attorneys (OACTA) Law Student Inclusion & Equity Scholarship program is open to the following incoming second and third year law students who are enrolled in an Ohio law school or are a permanent Ohio resident: Minority law students; LGBTQ (Lesbian, Bisexual, Gay, Transgender, Questioning) law students, regardless of race or ethnicity; Female law students, regardless of race or ethnicity; or, Law students from economically impoverished families/backgrounds, regardless of race or ethnicity. The criteria include academic achievements; service to the community and to the cause of inclusion and equity; and experience or interest in a civil defense practice.



Up to two (2) 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 must also submit at least one letter of recommendation but may submit a total of three. Applications must be submitted online with a cover letter. Transcripts and letter of recommendation may be mailed to the OACTA office.

The completed application and all other requested material must be received by **May 15, 2019**. Late or incomplete applications will not be considered. Scholarship recipients will be announced in June and recognized at the OACTA Annual Meeting in November. Funding is provided by the OACTA Foundation.

OACTA believes that a diverse membership makes a stronger organization. OACTA encourages inclusion and equity in all aspects of its activities and is committed to nurturing a culture that supports and promotes it.

For more information or to complete an application, visit [www.oacta.org](http://www.oacta.org).

[View Additional Scholarship Information](#)

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### Spring 2019 Insurance Coverage Update

*By: Michael M. Neltner, Insurance Coverage Committee Chair*

*The following cases represent the more relevant insurance coverage cases decided by the Sixth Circuit, Ohio Federal District Courts, Ohio Supreme Court, and lower state appellate courts applying Ohio law in late 2018/early 2019. Many thanks to Megan Faust and Nick Adair of Roetzel & Andress and Gerald Southard and Tiffany McAbee of The Cincinnati Insurance Company for assisting with these summaries.*

#### **Ohio Supreme Court**

##### **1. No Coverage for General Contractor for Faulty Workmanship of its Subcontractors: Custom Agri Extended by Ohio Supreme Court**

*Ohio Northern Univ. v. Charles Construction Services, Inc., 2018-Ohio-4057 (Ohio 2018)*

In 2008, Ohio Northern University ("ONU") contracted with Charles Construction Services, Inc. ("Charles") to build two new buildings on campus. The contract required Charles to maintain a CGL policy that included a PCOH clause. Charles obtained a policy from Cincinnati Insurance Company ("CIC") that included a PCOH clause and terms specifically related to work performed by subcontractors. The maximum payout under the CGL policy was \$2M, and the separate maximum payout under the PCOH clause was \$2M. The project's estimated case was \$8M.

[Read more](#)

### OACTA represented at DRI Leadership Conference

OACTA was well-represented at the 2019 DRI Leadership Conference in Chicago in January. Attendees included: OACTA Past President and DRI Membership Chair, John J. Garvey, III (Garvey | Shearer | Nordstrom, PSC), OACTA Past President and DRI Regional Director, Gary Grubler (Grange Insurance), OACTA Past President and DRI State Representative, Anne Marie Sferra (Bricker & Eckler LLP), OACTA President, Jim Kline (Ulmer & Berne LLP), OACTA Executive Director, Debbie Nunner.



## THE EXPERTS **Robson Forensic**

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### **Preparing for Compliance: The California Consumer Privacy Act May Impact Your Clients**

*By: Devin Jacobs & Anne Marie Sferra*

The California Consumer Privacy Act (CCPA) is a new consumer privacy law that affords California residents increased rights in accessing and controlling how organizations use personal data. The CCPA began as a ballot initiative and was enacted on June 28, 2018 and will become effective on January 1, 2020. Organizations that fall within its broad reach need to start thinking about compliance.

Before getting into the details of the CCPA, you might be asking yourself, why do I need to know about the CCPA? Or, why should I care about new laws in California? Quite simply because your clients, based in Ohio or elsewhere, may need to comply with it. And, as an aside, ballot initiatives that start in California often have a way of making their way to Ohio. (Remember the Ohio Drug Price Relief Act of 2017 or the Ohio Kidney Dialysis Patient Protection Amendment of 2018? Both had their genesis as California ballot initiatives.)

Below is basic information to help you and your clients understand the CCPA.

[Read more](#)





“Every contact leaves a trace”

- Dr. Edmond Locard

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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](#)



### Ohio Supreme Court Puts a Deep Freeze on Construction Contractors

By: *Stu Harris and Greg Dick*

In a case with broad implications for insurers and insureds in the



construction industry, the Ohio Supreme Court recently held that there is no insurance coverage available for general contractors when the subcontractor's work is defective.

Typically, a subcontractor's defective work will cause damage to other good or non-defective work. For example, the roofing subcontractor fails to follow the plans and specifications or fails to use the proper materials and then the roof leaks, causing water damage to walls, floors, or other parts of the structure.

For commercial projects, a subcontractor's defective work, like in the example above, can cause extensive damage that costs a considerable amount to repair. That's where insurance usually steps in. That was, in Ohio, until the decision in *Ohio Northern University v. Charles Construction Services, Inc.*

[Read more](#)

## Preparing for Compliance: Ohio's Insurance Data Security Law

*By: Noor Rahman & Anne Marie Sferra*

Ohio is the second state to adopt cybersecurity legislation modeled after the National Association of Insurance Commissioner's (NAIC) Insurance Data Security Model Law. The Ohio law, Senate Bill 273, became effective on March 20, 2019 and applies to insurers authorized to do business in Ohio. Companies have a year to put the security measures into place.

Like the NAIC model law, Ohio's law requires insurance providers to take several steps to protect nonpublic personal information. Requirements include conducting risk assessments, submitting annual compliance certifications to the insurance superintendent, and having a written information security program.

Below is basic information to help you and your clients understand the new legislation.

[Read more](#)



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## 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](#).

## 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.](#)

## 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](mailto: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](mailto:OACTA@AssnOffices.com) and we will follow up to request the information needed.

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## Member Spotlight

*Author & Interviewer: Tony E. Brown, OACTA Update Co-Chair*

### **OACTA Congratulates but will Miss Long-Time Member, Kurt Weitendorf**



OACTA extends its sincere congratulations to thirty-year member, Kurt A. Weitendorf, Esq. Kurt spent his entire professional career practicing civil litigation for the Akron firm, Roderick, Linton, Belfance, LLP. He passed the bar examination in 1980, and has tried over 100 civil jury trials to verdict in Ohio state and federal courts.


This writer had an opportunity to recently sit down with Kurt over lunch. When he walked into the restaurant, Kurt glowed with happiness. Everyone in the restaurant could see he is a relaxed, content and happy person. After spending time with him, it is clear that he is well satisfied after a long career as a civil defense attorney. The writer, over the course of the years, also had the opportunity to handle at least two cases with Kurt. He admits that his "schtick" is to be the "nice guy", the polite and easy-to-work-with professional. It's clear that his demeanor and the way he handled himself was not a "schtick" but Kurt's genuine personality. Thus, there is no wonder why Kurt had a long and successful career. He will be missed by OACTA and all who have had the opportunity to practice with him.


[Read more](#)



Kurt in Antarctica for his post retirement trip.

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