



OHIO
ASSOCIATION
of CIVIL TRIAL
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The Source for Defense Success

The UPDATE

News & Practice Pointers from OACTA

SPRING 2013

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SAVE THE DATE!

April 12, 2013
Trial Tactics Boot Camp
Onsite Registration Available!

June 2013
Insurance Coverage

President's Message

A Spring In Our Step

By: Kurt D. Anderson
 2013 OACTA President



The calendar says spring has arrived. Flowers are peeking out of my mulch. Baseball season has opened. With Easter and Passover, we've just celebrated life and liberty. Everywhere there's an anticipation of energy, life, and renewed activity.

Things are heating up here at OACTA, too. Not that we've been hibernating over winter.

Of course, the big news has been the governor's proposal to expand Ohio's sales tax to include professional services. Your Board stood in unanimous opposition to the taxation of legal services, and together with opposition from the OSBA, OAJ, and other state and local bar and professional associations, that proposal appears to have squelched.

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Young Lawyers Committee Update

Attention Young Lawyers, New Lawyer, Law Students, and Experienced

Seminar

September 3, 2013
OACTA Golf Outing

November 14-15, 2013
OACTA Annual Meeting

Submit Articles to the Newsletter Committee:

[Joe Borchelt](#)

[Tony Brown](#)

Send a Member Request

oacta@assnoffices.com

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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](#)

Lawyers who just want a refresher course or to sharpen your trial tactics skills: mark your calendars for Friday, April 12, 2013. The Young Lawyers Committee and Trial Tactics Committee are coordinating a Trial Tactics Boot Camp at Capital University Law School. This CLE is a must-attend for all new or young lawyers and even those who are most experienced! Interactive presentations will be given on various aspects of a trial, including jury selection, opening and closing statements, using expert witnesses, use of exhibits and preserving errors for appeal. S-E-A is hosting a Happy Hour for all attendees afterward at Club 185. This is a fantastic opportunity to relax and network with your fellow OACTA members.

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REVEALING THE CAUSE

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S-E-A
Scientific Expert Analysis

OACTA Is Updating Its Expert Witness Database!

OACTA is working to make the Expert Witness Database a more valuable tool for exclusive use by OACTA members. But to do it, we need the names of your best defense experts.

It's easy. Just take a few minutes and submit the names of any experts you have recently used and would recommend to your fellow members.

[SUBMIT AN EXPERT NOW](#) or [CLICK HERE](#) to download a Expert Witness Submission Form.

Complete the form and return either by email: oacta@assnoffices.com or by fax: 614-221-1989.

Deadline for 2013 Law Student Diversity Scholarships is April 19th.

OACTA has developed a Law Student Diversity Scholarship program. Scholarships are 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.

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Bad Faith Without Coverage? Maybe

By *Brian E. Roof, Esq. and Michael E. Smith, Esq.*
Frantz Ward LLP

Can an insurer be liable for bad faith even though its decision to deny coverage was correct? In Ohio, the answer is anything but clear. Ohio courts have developed what appears to be a split of authority on this issue. Some, however, contend this purported "split" of authority is reconcilable.

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Agency Liability in Ohio

By: *Rick E. Marsh*
Lane, Alton & Horst, LLC

Recent decisions have raised the issue of whether or not, in a tort case, the plaintiff must sue both the employee and the employer / the servant and the master / the truck driver and the trucking company. The most accepted practice has probably been to sue both and then when the case comes to trial, once agency has been established, to dismiss the impoverished agent, servant or truck driver and keep the deep pockets in the case.



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Ohio's New Commercial Docket Rules

By: *Jennifer Brumby*
Freund, Freeze and Arnold

On February 26, 2013, the Ohio Supreme Court adopted Rules 49 through 49.12 to govern the establishment and operation of commercial dockets in Ohio. This plan was first proposed in 2007 by the late Chief Justice Moyer with the purpose to accelerate decisions in business litigation and promote consistency at the trial court level. In May 2008, Cuyahoga, Franklin, Hamilton and Lucas counties created "pilot" commercial dockets in an effort to carry out the proposal. The Ohio Supreme Court designated two common pleas court judges in each of the four counties to preside over the commercial dockets.



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Massive Insurance Fraud Scheme Uncovered in New York

By: *Stephanie Adams*
Grange Insurance



New York requires residents to carry No-Fault insurance benefits up to \$50,000. This means a person can receive up to \$50,000 for injuries sustained in an automobile accident regardless of who was at fault for the accident. On February 29, 2012 it was alleged that attorneys, doctors and medical clinic owners were actively soliciting clients to create false lawsuits as a part of a five year fraud scheme.

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OACTA Statement Opposing Taxation of Legal Services

On behalf of its members, the Board of Trustees of the Ohio Association of Civil Trial Attorneys ("OACTA") unanimously opposes the recent legislative proposal to tax legal services. OACTA believes the tax is inappropriate because legal advice is an essential service, and because the tax will harm Ohio citizens, businesses, and jobs.

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OACTA Recruit 1 Campaign

OACTA would like to thank all of those who participated in the Recruit 1 campaign. All new OACTA members will be entered into a grand prize drawing for a complimentary registration to the 2013 OACTA Annual Meeting to be held November 14-15 in Cleveland. All OACTA members who recruited new members will be entered into a grand prize drawing for a \$500 gift card to the Apple Store (gift card provided by Exponent)! Drawings will be held on April 12th at the Trial Tactics Boot Camp Seminar.

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MEMBER NEWS

OACTA UPDATE ANNOUNCES "MEMBER NEWS" SECTION OF QUARTERLY NEWSLETTER

Have you or the other OACTA members of your firm or practice received a promotion, been recognized for personal or professional achievement, been appointed to a board, commission, or organization, or received other professional recognition? If so, now is your opportunity to share such recognition or achievement with your fellow OACTA members.

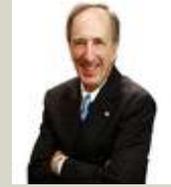
Keep in mind that the OACTA Update will feature its "Member News" section, which is designed to highlight and inform our membership of the personal and professional accomplishments of our tremendously gifted and talented OACTA members. If you or another member of your firm or practice meet the above criteria, please provide a brief, one-paragraph description to the editors of the Update: Tony Brown (tonyb@bakerfirm.com), or Joe Borchelt (jborchelt@reminger.com).

We look forward to your submissions and the opportunity to share your many accomplishments with our organization.

OACTA Members Featured in DRI's The Voice

Congratulations to OACTA members **Nick Subashi** and **Adam E. Carr** for being noticed in DRI's "And the Defense Wins", as part of DRI's e-mail publication, The Voice.

On February 13, 2013, Nick Subashi of Subashi & Wildermuth, in Dayton, was recognized by DRI for his unanimous defense verdict in the Clark County Court of Common Pleas. Nick represented a sub-contractor in a commercial claim brought by an operator of a 66,000 square foot building against Nick's client and a general contractor. In a complicated case involving excess claims and a client who did not appear for trial, after two hours of deliberations, the jury returned a verdict in favor of Nick's client and a 2.18 million dollar verdict against the general contractor.



On March 6, 2013, The Voice recognized OACTA member, Adam E. Carr of The Carr Law Office, LLC, in Hudson, Ohio, for his unanimous defense verdict in the Ashtabula Court of Common Pleas. In a case of a high-speed, admitted liability auto accident, after two days of trial and 30 minutes of deliberations, Adam obtained a defense verdict for his client.

OACTA Congratulates Nick and Adam for jobs well done and for their recognition in DRI's national e-mail publication.

OACTA Member Receives Award from DRI Women in the Law Committee

Please join us in congratulating OACTA member **Marilyn Fagan Damelio** as the inaugural recipient of the DRI Award for the Advancement of Women in the Legal Profession. Ms. Damelio was presented with this prestigious award on March 14, 2013 at the DRI Women in the Law Seminar, hosted by DRI's Women in the Law Committee. Congratulations to Marillyn for her continued commitment to the advancement of women in the legal profession.



OACTA Members Win Affirmation of Summary Judgment in Insurance Coverage Suit

On March 8, 2013, OACTA member **Rich Garner** and **Kurt Anderson**, of Davis & Young, won an affirmation of summary judgment on behalf of Westfield Insurance Company, when the Sixth District agreed that a self-propelled telescoping boom lift was "mobile equipment" and not a "covered auto," and that Westfield's policy did not provide UM/UIM coverage to the operator. See *Jeremay v. Westfield*, 2013-Ohio-837.



OACTA Member Named an Ohio State Bar Foundation Fellow, Accepted to Leadership Academy

and United Way's Project Diversity

OACTA member **Stephanie Adams** been named an Ohio State Bar Foundation Fellow, was accepted into the 2013 Ohio State Bar Association's Leadership Academy, and the 2013 class for Project Diversity for the United Way. Each year, the Ohio State Bar Foundation extends this fellowship honor only to lawyers whose careers have demonstrated their dedication to the highest ideals of the legal profession and the welfare of their community. Outstanding individuals from around the state are invited to become a member of this select group.



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OACTA Member Served as Moderator at the ABA-OSHA Committee Mid-Winter Meeting

OACTA Member **Bill Wahoff**, of Scott, Scriven & Wahoff LLP of Columbus, served as Moderator for the session on "Significant Decisions" at the ABA-OSHA Committee Mid-Winter Meeting in Los Angeles, California on March 7. Wahoff, a member of the Committee since 1995, and currently Membership Liaison to the Labor & Employment Law Section of the ABA for the OSH Committee, presided over discussion of the Dayton Tire case, which clarified the elements of willfulness in OSHA citations, and another important precedent shortening the statute of limitations for Recordkeeping violations.



OACTA Member Belinda S. Barns Runs for OSBA President

Long time OACTA member and partner at the law firm of Gallagher, Gams, Pryor, Tallan and Littrell, LLP - **Belinda S. Barns** - has announced her candidacy for President-Elect of the Ohio State Bar Association. Belinda is currently the District 7 (Franklin County) representative on the OSBA Board. The OSBA Annual Convention will be held in Cleveland, Ohio this year from May 8, 2013 through May 10, 2013. OSBA members do not need to register for the convention in order to vote, but must show up to the convention in order to vote. For more information regarding Belinda and her qualifications, please click on the attached link to view her biographical information."



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Karen Ross promoted to Counsel

Tucker Ellis LLP is pleased to announce that Karen Ross has been promoted to Counsel.

Karen Ross practices in the Cleveland office of Tucker Ellis in the firm's trial department. She focuses on mass tort, product liability, and medical malpractice, defending some of the nation's leading manufacturers and medical care providers. She is a member of the Cleveland Metropolitan Bar Association where she participates as a High School Internship Program volunteer. She also leads Tucker Ellis attorneys as coaches for the John Hay High School Mock Trial Team, and she established the Tucker Ellis John Hay High School Mentoring Program. Ms. Ross received her undergraduate degree from Kenyon College and her law degree from Case Western Reserve University School of Law.



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