



# The UPDATE

*News & Practice Pointers from OACTA*

Spring 2014

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## PRESIDENT'S MESSAGE

By **Anne Marie Sferra**  
2014 OACTA President

Whirlwind. Not sure why, but I love that word. And nothing better describes the first few months of 2014 for OACTA (and for me personally and professionally).

To kick-off 2014, in January, DRI sponsored a conference for state and local defense association leaders from around the country in Chicago. (I'm shivering just thinking of how bitterly cold it was!) Your Ohio contingency learned a lot about what other state and local defense organizations are doing to address challenges, provide more value to members, and enhance the voice of the defense bar. We also got the sense that some of OACTA's activities and initiatives are highly regarded. Our golf outing benefiting the National Foundation for Judicial Excellence and our diversity scholarship are noteworthy examples.

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## OACTA Strategic Plan

The OACTA Board of Directors has revised the OACTA mission statement and has developed a three year strategic plan.

### GOALS:

**Membership** - Grow and diversify the membership to enhance value and include critical partners for a greater influence in the justice system

"Take-Home" Premises

Liability asbestos  
Exposure Claims

Professionalism for the  
Young Lawyer

Sex-Plus Discrimination

"What About the Bills?"

Member News - Laura  
Kingsley Hong

Member News - Rema Ina

Member News - Kerns

Member News - Carter  
Strang

Notable Decisions -  
Garner/Anderson

Leadership & Staff

Upcoming Events

**Personal Injury  
Defense Seminar**

April 25, 2014  
OCLC Conference  
Center

**Appellate Advocacy  
Seminar**

June 13, 2014  
Grange Insurance

**Business &  
Commercial Litigation  
Seminar**

August 8, 2014

**Golf Outing**  
September 2, 2014  
Pinnacle Golf Club

**2014 OACTA  
Annual Meeting**

Goal Champion: Jim Kline

**Image / Identity** - Effectively position OACTA as the premier source for defense success to the legal, judicial and business communities

Goal Champion: Jill Mercer

**Engagement & Networking** - Engage the OACTA membership through communications, networking and leadership

Goal Champion: Josh Bills

**Education & Resources** - Create a learning continuum for OACTA members through quality educational programs and resources

Goal Champion: Tom Glassman

**Advocacy** - Position OACTA as recognized scholars and experts by advocating on behalf of civil litigants in Ohio

Goal Champion: Brian Wildermuth

MISSION OF OACTA:

*The Ohio Association of Civil Trial Attorneys promotes fairness, excellence, and integrity in the civil justice system by providing resources and education to attorneys and others dedicated to the defense of civil actions.*



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**Save the Date!**

Mark your calendars . . . OACTA's Appellate Advocacy Seminar, featuring Chief Justice Maureen O'Connor, at Grange Insurance in Columbus, is on **June 13, 2014**. In addition to Chief Justice O'Connor, this all-day program includes judges from several Ohio appellate districts and experienced appellate practitioners. Like all OACTA

November 13-14, 2014  
Crowne Plaza  
Columbus

**Submit Articles  
to the  
Newsletter  
Committee:**

[Joe Borchelt](#)

[Tony Brown](#)

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**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

[Joe Borchelt](#)

**The Update Summer  
Issue deadline is  
June 30, 2014**

seminars, it's a great bang for your CLE buck. So, mark your calendars and help spread the word about this upcoming seminar!

## COMMITTEE UPDATES

### Young Lawyers Committee Update

The Summer Happy Hour Series is back!! The Young Lawyers Committee will be hosting Happy Hours in various cities across Ohio. As part of our efforts in engaging members, increasing membership networking and providing time for "fun", the Young Lawyers Committee is hosting the events from 5:30-7:00 p.m. as follows:

Thursday, **June 5, 2014**

**Toldeo**

**Ye Olde Durty Bird**

2 S. St. Claire St., 43604

Thursday, **June 12, 2014**

**Cleveland**

**Bar Louie**

1352 W. 6<sup>th</sup> St., Ste 152, 44113

Thursday, **June 19, 2014**

**Columbus**

**Gordon Biersch**

401 N. Front Street, 43215

Thursday, **July 17, 2014**

**Cincinnati**

**Scene Ultra Lounge**

637 Walnut Street, 45202

Thursday, **July 31, 2014**

**Dayton**

**The Pub**

39 Greene Blvd  
Beavercreek, 45540

Thursday, **August 14, 2014**

**Canton**

**The Barrel Room Wine Bar**

7901 Cleveland Avenue NW  
North Canton 44720

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### Personal Injury Defense Committee Update

The Personal Injury Defense Committee will host a Seminar on April 25 in Dublin, Ohio. Brochures have been mailed. Please try to attend and circulate the brochure to other attorneys, claims representatives, judges, and others interested in attending. The seminar promises to be informative and entertaining. We look forward to seeing many familiar faces and new members as well.

Click here to download the [registration brochure](#).

## ADR Committee Update

The ADR Committee is compiling a list of recommended mediators. The goal is to provide a resource so that OACTA members can easily find approved neutrals regardless of the venue in Ohio. The committee is seeking your input to supply names for the list. A [Mediator Submission Form](#) is attached. Submissions should go to Joe Mordino at [jmordino@faulkner-tepe.com](mailto:jmordino@faulkner-tepe.com). The final list of mediators will be made available to members through the OACTA website. Thank you for your support of OACTA and the ADR committee.

## Amicus Committee Update

OATCA filed memoranda in support of jurisdiction in two cases and merit briefs in two cases this quarter. We want to thank all of the authors for their excellent work on these briefs.

### *Infinite Security v. Karam Properties*

OATCA filed a brief urging the Court to rule that a trial court's entry of dismissal that (1) states the parties have resolved their differences or have arrived at a settlement agreement, (2) states that the dismissal is without prejudice, (3) permits the submission by the parties of a final entry of dismissal, and (4) provides a time-frame for the filing of any final entry of dismissal, is a conditional dismissal that does not divest the trial court of jurisdiction to consider and enforce the terms of the settlement agreement.

[Read More...](#)

## Insurance Committee Update

*The following cases represent the more relevant insurance coverage cases decided by the Ohio Supreme Court, federal courts, and lower state appellate courts in late 2013/early 2014. Many thanks to Megan Faust and Chris Cotter of Roetzel & Andress, John Farnan and Rema Ina of Weston Hurd, and Jim Nolan of Smith Rolfes for assisting with the summaries. These summaries appear here chronologically in the order in which they were decided.*

1. **ANOTHER EMPLOYER INTENTIONAL TORT VICTORY FOR EMPLOYERS.**

In keeping with our commitment to keep our OACTA members up to date with what is going on in the Employer Intentional Tort ("EIT") arena, the Court of Claims recently decided a case in favor of the employer under the EIT statute. While this is not really an insurance coverage case, we have been "modifying" our summaries to include EIT cases due to their importance in the overall scheme of insurance coverage.

[Read More...](#)

### **Employment Law Committee Update**

The Employment Law Committee would like to welcome Patricia F. Krewson, Esq. of Jackson Lewis P.C., who has graciously agreed to be the vice-chair of the Committee. Please be sure to review Patricia's article in this newsletter, which focuses on a potentially pivotal recent case from the Sixth Circuit on the issue of "sex-plus" discrimination claims.

The Employment Law Committee recently assisted the amicus curiae committee by preparing a memorandum in support of jurisdiction in an age discrimination case that asks the Ohio Supreme Court to adopt the Sixth Circuit's standard for pretext. The committee is also planning a webinar for later this spring, and further details will be announced in the coming weeks.

Thank you to everyone who has expressed an interest in the Committee. We hope to continue to grow in numbers and offer all members of OACTA content that is timely and informative. Please let us know of any topics or agenda items that you would like the Committee to address.

### **Business and Commercial Litigation Committee Update**

The Business and Commercial Litigation Subcommittee welcomes its new vice Chair, Candi Taggart, of Porter Wright Morris and Arthur in Cincinnati. The Subcommittee is busy planning for its upcoming Educational Seminar on August 8 in Columbus. The details will be forthcoming soon.

We are also looking for individuals willing to host a meeting in your respective city to discuss recent trends in business and commercial litigation. Brian Bradigan of Davis and Young hosted a meeting in Franklin County in the fall of 2013. We discussed a range of topics including the use of technology in the courtroom, trial practice and electronically stored evidence. We are interested in holding similar meetings in Cleveland, Toledo and Cincinnati. Anyone interested in

hosting a meeting should contact Andy Vollmar at Freund, Freeze and Arnold in Dayton.

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### Diversity Scholarship

#### OACTA 2014 Law Student Diversity Scholarships Available

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 community and to the cause of diversity;

Up to two (2) 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.

The completed application and all other requested material must be received by **May 15, 2014**. Late or incomplete applications will not be considered.

Winners will be announced in June 2014. Scholarship recipients will be recognized at the OACTA Annual Meeting in November.

[Download Application](#)



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## OACTA Recruit 1

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 2014 OACTA Annual Meeting to be held November 13-14 in Columbus. 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 25th at the Personal Injury Defense Seminar.

### **Welcome to the following NEW OACTA MEMBERS:**

*Michael Moskowitz - Schever Mackin & Breslin LLC*  
*Steven Keslar - Cory, Meredith, Witter and Smith, LPA*  
*Keona Padgett - Reminger Co., L.P.A.*  
*Jennifer Brill - Freund, Freeze & Arnold*  
*Eric Grinnell - Smith Marshall, LLP*  
*Douglas DiPalma - Cavitch, Familo & Durkin CO., LPA*  
*Aletha Carver - Krugliak, Wilkins, Griffiths & Dougherty, Co., LPA*  
*Claire Curtis - Bonezzi, Switzer, Polito & Hupp*  
*Keesha Warmsby - Bricker & Eckler Co., LLP*  
*Jonathon Brollier - Bricker & Eckler Co., LLP*  
*Joseph Simms - Ulmer & Berne LLP*

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## In Defense of Trees

*By T. Andrew Vollmar*

We all know that when a tree falls in the forest, it makes a sound regardless of whether anyone is there to hear it-right? Although we may never know the answer to this age old question, this article answers a less philosophical question: What are the legal consequences to a property owner when a tree damages a person or property? This writer predicts that tree related cases may become more prevalent in Ohio as a result of two recent phenomena: an increase in both the number of significant weather events and the number of dead trees that are victims of the Emerald Ash Bore insect. The end result is that more and more trees are in distress and in danger of causing damage to persons or property. But, when is a property owner responsible for damages caused by a tree to someone else's property, or even worse, personal injury?



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## **"Take Home" Premises Liability Asbestos Exposure Claims**

*By Carter E. Strang, Karen E. Ross, and Madeline Van Gunten, Tucker Ellis LLP*

"Take-home" liability claims are no longer a rarity, as plaintiffs' counsel increasingly assert them and obtain some substantial verdicts, including a recent \$27.5 million dollar Cuyahoga County, Ohio verdict.



Take-home claims are those asserted on behalf of claimants that have never set foot on the premises but allegedly were exposed to asbestos through their spouses or others who brought it home on their clothing. They are also commonly referenced as "household," "bystander," "secondary," or "second-hand" exposure claims.



They are asserted against product manufacturers and premises monograph, the fifth annual by the owners. It is the latter claims that are the focus of this authors.



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## **Professionalism For The Young Lawyer**

By Nicholas Bobb and Zachary Pyers



In 1992 the Supreme Court of Ohio established the Commission on Professionalism. That same year, the Court published a Statement on Professionalism. That Statement emphasized the Court's growing concern over "a diminishing of courtesy and civility among lawyers in their dealings with each other, a reduction in respect for the judiciary and our system of justice and lessening of regard for others and commitment to the public good. . . ." In this sentence, the court summarized how to conduct one's self as a professional: be courteous and civil, respect the court, and commit yourself to the public good.



The practice of law has changed significantly in the 22 years since the Court established the Commission. Striving to be a professional today poses challenges that did not even exist then. New and young lawyers are forced to face these challenges while remaining cognizant of their obligation of professionalism which they owe to their clients, opposing counsel, the court, as well as the community. While the Supreme Court of Ohio codified what it means to be a professional in the Rules of Professional Conduct, these rules present only the framework on which a true professional builds his or her reputation and character. This article examines the obligation of professionalism and the specific challenges presented to the young lawyer.

[Read More...](#)

### ***Who's Your Comparator, Now? The Sixth Circuit's Latest Take on the Sex-Plus Discrimination Claim***

By: Patricia F. Krewson and Donald G. Slezak, J.D. Candidate 2014

The Sixth Circuit Court of Appeals recently acknowledged the validity of a sex-plus discrimination claim based upon a plaintiff's status as not just a woman or even an African American, but as an African American woman. In *Shazor v. Prof'l Transit Mgmt.*, 2014 Fed. App. 0034P (6<sup>th</sup> Cir. 2014), the plaintiff, an African American woman, alleged that her former employer discriminated against her based upon her combined race and sex when she was fired for allegedly lying to the Board of Directors on two occasions. The plaintiff, former CEO of a company managed by Professional Transit Management ("PTM"), clashed with management personnel for failing to be team-player and for "showing little respect" and a "lack of class" towards her employer. The plaintiff's



one-time supervisor and the former president of PTM exchanged several e-mails complaining of the plaintiff's unprofessional attitude, referring to the plaintiff as a "prima donna," "one helluva bitch" and, in conjunction with another female, as "one of the girls."

[Read More...](#)

## What About the Bills? - Dispute about Medical Bill Write-Offs Is Not Over

By: Kurt D. Anderson



Many had hoped that the Ohio Supreme Court's October, 2013 decision in *Moretz v. Muakkassa* would end the debate about medical billing write-offs. But on March 17, 2014 the Stark County Court of Common Pleas granted a motion in limine excluding evidence of write-offs at trial in *Christine Jones v. State Farm*, Stark County Case No. 2013-CV-1066 (accessible at [www.starkcjis.org/docket/main.html](http://www.starkcjis.org/docket/main.html)), on the grounds that, while evidence of write-offs may be relevant under *Muakkassa*, Evidence Rule 403 still applied to preclude any evidence that was otherwise unfairly prejudicial and/or likely to cause juror confusion.

In the Court's decision, the Honorable Frank Forchione ruled that evidence of write-offs is unfairly prejudicial by treating plaintiffs with health insurance differently than plaintiffs without health insurance, stating:

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## MEMBER NEWS

### Laura Kingsley Hong joins Tucker Ellis as Mass Tort Partner

Tucker Ellis LLP is pleased to announce that Laura Kingsley Hong has joined the firm's Mass Tort & Product Liability Practice Group as a Partner. Ms. Hong brings more than 25 years of experience defending class action, mass and toxic tort, and product liability litigation to the firm. Ms. Hong has a national litigation practice in asbestos, toxic tort, products, and commercial litigation matters. She serves as trial counsel in state and federal courts nationwide and has tried several cases to jury verdict. As national and local counsel, she partners with clients and counsel to provide a cohesive and collaborative defense team. She has also arbitrated before the American Arbitration Association.



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### **Rema Ina joins Weston Hurd, LLP**

Weston Hurd LLP is pleased to announce that Rema A. Ina has joined the Cleveland office as an Associate. Rema focuses her practice on matters involving employment, insurance coverage and defense, and workers' compensation. Prior to joining Weston Hurd, Rema was an Assistant Attorney General in the Workers' Compensation and the Employment Law sections of the Ohio Attorney General's office.



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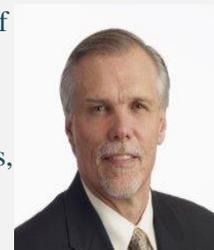
### **Brian Kerns Elected Treasurer of the Medina County Bar Association.**

Brian Kerns was recently elected Treasurer of the Medina County Bar Association. Brian also serves as Secretary of OACTA and has served on the OACTA Board of Trustees since 2007. Brian has a law office in Medina, Ohio where he resides with his wife and three kids (all Ohio State Buckeyes). Brian opened an office for Isaac, Wiles, Burkholder and Teetor which serves Northeast Ohio.



### **Center for Community Solutions Names Carter Strang to Board of Directors**

The Center for Community Solutions has named **Tucker Ellis LLP** partner Carter Strang to its Board of Directors. A nonprofit, non partisan think tank, The Center for Community Solutions focuses on solutions to health, social, and economic conditions. A centerpiece for community planning for over 100 years, Community Solutions has offices in Columbus and Cleveland where it is headquartered.



## **NOTABLE DECISIONS**

On March 13, 2014, Richard Garner and Kurt Anderson at Davis & Young obtained summary judgment from the Cuyahoga County Court of Common Pleas, which ruled that The Hartford did not owe coverage for a malpractice claim against an insured attorney, where the attorney had failed to report the known instance of malpractice when he applied for Hartford's claims-made policy. The trial court upheld the policy's exclusion of known but undisclosed prior errors which "might result in a claim", even though the insured attorney argued that the claim was not foreseeable because the client was a friend who promised not to sue, and because the dismissal triggered by the attorney's error was still being appealed at the time of the application. This decision, the first on the issue by an Ohio court, joins the majority of jurisdictions nationwide in finding that the "prior knowledge" exclusion is triggered by the failure to report a known instance of prior malpractice, even if no claim has been asserted at the time of the application, and even if the client gives assurances that no claim will be forthcoming. The case is *Kevin Tarquinio v. Joseph Pfundstein, et al.*, Cuyahoga County Case No. CV-12-788571.



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