

*News & Practice Pointers from OACTA*

Spring 2016

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**PRESIDENT'S MESSAGE**

**By John J. Garvey, III**  
**2016 OACTA President**



March Madness ended with an especial flourish this year, and the happy return to the Great Outdoors now resumes: The familiar sounds of the crack of ball and bat on baseball and softball diamonds across the land, and referee whistles and, yes, screaming parents on soccer fields, all throughout the great Buckeye State. In related news, like flowers which blossom so brilliantly and bright, new OACTA members have sprung from your referrals, encouragements, recent law school graduations, or found us based on our stellar reputation, and helped keep OACTA vibrant and new. Welcome indeed!

New blood is an essential ingredient for every active organization, and retention is essential as well. We are very grateful to all who have renewed their membership, who have joined us for our 50<sup>th</sup> Anniversary Year, and who have encouraged others to join. For years now OACTA has done much good and "seeded" potential new members by supporting and awarding the Diversity Scholarships to deserving law students.

On April 15 we just hosted the Trial Tactics Boot Camp Seminar in Columbus, Ohio, on the campus of Capital University Law School. This was wonderfully planned and presented by our Trial Tactics Committee. Thank you to all the organizers and all the attendees. It was very well done!

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**June 24th**

Personal Injury  
Seminar  
Grange Insurance,  
Columbus, Ohio

**August 26th**

Governmental Liability  
Seminar  
Quest Conference  
Center, Columbus, Ohio

**September 6th**

Golf Outing  
Pinnacle Golf Club,  
Grove City, Ohio

**November 10-11th**

OACTA Annual Meeting  
Sheraton Columbus at  
Capital Square

**November 10th**

OACTA 50th  
Anniversary Gala  
The Ohio Statehouse

**Submit Articles  
to the  
Newsletter  
Committee:**

[Tony Brown](#)

[Ian Mitchell](#)

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Civil Trial Attorneys**

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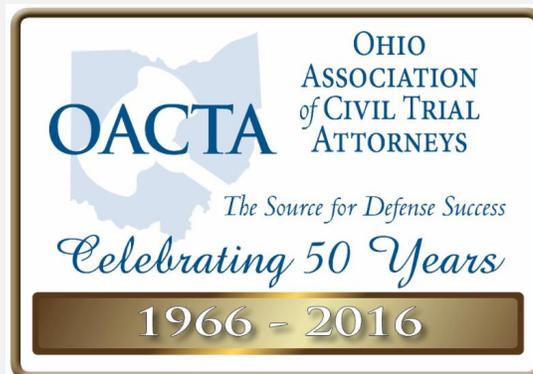
## OACTA CELEBRATES 50 YEARS!

OACTA is celebrating its 50<sup>th</sup> anniversary this year! For 50 years, the Ohio Association of Civil Trial Attorneys has been *The Source for Defense Success* in the state of Ohio. We hope you will join us in celebrating the last 50 years as we look ahead toward the next 50! In conjunction with the **OACTA 2016 Annual Meeting, November 10-11** at the Sheraton Columbus at Capitol Square, **the 50<sup>th</sup> Anniversary Celebration Event will take place on Thursday, November 10<sup>th</sup> at the Ohio Statehouse in Columbus. SAVE THE DATE and PLAN TO ATTEND!**

The planning committee is collecting OACTA historical documents and photographs to display at the event. **If you have photographs or information to share, please scan and send to [OACTA@AssnOffices.com](mailto:OACTA@AssnOffices.com) or mail to the OACTA office (the items will be returned to you after the event).**

**All net proceeds from this celebration event will benefit The OACTA Foundation!** In its inaugural year, The OACTA Foundation (a 501(c) 3 organization) is organized exclusively for charitable and educational purposes, funding projects consistent with the mission of OACTA, such as the annual OACTA Diversity Scholarship Program and supporting the National Foundation for Judicial Excellence (NFJE).

**OACTA members, firms, organizations and vendors are asked to consider supporting The OACTA Foundation by providing a financial contribution.** For more information regarding support opportunities, or to contribute, download the [sponsor opportunities form](#), indicate your level of support and return it to the OACTA office. We sincerely appreciate your consideration of this worthwhile initiative! Tickets to the event will be available when annual meeting registration opens this summer! **Mark your calendars and plan to attend!!**



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**The Update Summer  
Issue deadline is  
July 1, 2016**

**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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**Recruit 1 A Success!**

Seventeen new OACTA members were recruited by current members in the OACTA Recruit 1 Campaign. At the Trial Tactics Boot Camp on April 15th, the drawings were conducted and winners announced:

**OACTA member Andrew Mollica was the winner of the Apple Watch, donated by Veritext Legal Solutions.**

**OACTA member Zachary Pyers was the winner of the \$500 Apple Gift Card, donated by Cefaratti Group.**

**New member David Mott received the certificate for the complimentary registration to the 2016 OACTA Annual Meeting.**



David Mott wins complimentary Annual Meeting Registration

Thanks to all the members who participated and welcome to all the new members! Thanks to Veritext Legal Solutions and Cefaratti Group for their wonderful prize donations!



Andrew J. Mollica wins Apple Watch



Zachary Pyers wins \$500 Apple Gift Card



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## Kentucky Defense Counsel - Seminar Invite

The Kentucky Defense Counsel (KDC) is holding their Spring Seminar, on April 29<sup>th</sup> at the U OF L Shelby Campus in Louisville, KY. The seminar features speaker Paul Unger, an attorney and a founding principal of Affinity Consulting Group in Columbus, Ohio, a nationwide consulting company providing legal technology consulting, training and continuing legal education. Up to 6.0 hours of CLE credit is approved for Ohio credits. For this seminar, the KDC is offering OACTA members the KDC member rate. [CLICK HERE](#) to view the registration brochure. To register, contact Kathi McKeown at the KDC office at 502-228-9256.



## Committee Updates:

### Trial Tactics Committee Update

by Natalie Wais, Committee Co-Chair

The Trial Tactics Committee and Young Lawyers Committee co-hosted the Trial Tactics Bootcamp on April 15, 2016 at Capital University Law School. The Committee wishes to thank all those involved in planning, presenting, implementing, and attending the Bootcamp. The Committee also wants to acknowledge S-E-A for hosting a happy hour for attendees afterward.

If you have any interest in becoming more involved in the Trial Tactics Committee, please reach out to Jerry Rolfes ([jrolfes@smithrolfes.com](mailto:jrolfes@smithrolfes.com)) or Natalie Wais ([nwais@yandalaw.com](mailto:nwais@yandalaw.com)).



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**Court's Application of Double Damages Raises Questions in Medicare Secondary Payer Act's Private Cause of Action**

*by Zachary Pyers, J.D., LL.M. and Daniel Bey, J.D., LL.M.*

The Medicare Secondary Payer Act ("MSPA")<sup>[i]</sup> has caused much confusion among practitioners. When a plaintiff is a Medicare recipient, defense practitioners find themselves forced to consider such things as complying with mandatory reporting of claims, ensuring that conditional payments made by Medicare are reimbursed, and taking into account Medicare's future interests in any settlement. However, one area that tends to be overlooked is the provision of the MSPA that authorizes a private cause of action and permits the award of double damages for a primary payer's failure to protect Medicare's interests.

Over the years, there have been a number of unsuccessful suits brought under the MSPA asserting private causes of action. A recent case from a Michigan Circuit Court brought the private cause of action created under the MSPA into the spotlight. This decision awarded damages against an employer in a private cause of action for failing to appropriately reimburse Medicare in a timely manner for health care expenses it should have paid under the statute.<sup>[ii]</sup> While the ruling in *Hull v. Home Depot USA, Inc.* was fact specific and issued by a Michigan state court, the case should serve as a warning for all attorneys to remain cognizant of the private cause of action created under the MSPA and its effect upon their clients as they settle both general liability and workers' compensation claims.

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## Utilizing the Doctrine of Judicial Estoppel to Defeat Legal Malpractice Claims

by David J. Oberly

### I. Introduction

Judicial estoppel precludes a party from assuming inconsistent positions in separate legal actions. If a party took one position in a prior legal action, he or she cannot take a different position on the same issue in a subsequent action. While the doctrine of judicial estoppel is intended to guard the judicial system against improper use, it also serves as a potential weapon that can be used to completely defeat a wide variety of legal malpractice claims and lawsuits as well.

### II. Overview of the Doctrine of Judicial Estoppel

Judicial estoppel is an equitable doctrine governed by equitable principles. It "protects the integrity of the judicial process by preventing a party from taking a position inconsistent with one successfully and unequivocally asserted by the same party in a prior proceeding." Judicial estoppel is applied in order to "preserve the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposing suit an exigency of the moment." While similar to collateral estoppel, the two are not identical. Collateral estoppel prevents a party from re-litigating a position he took and lost. The doctrine of judicial estoppel prohibits a party from taking a position inconsistent with one successfully and unequivocally asserted by the same party and advanced under oath in a prior court proceeding. Judicial estoppel may only be applied where the party making the inconsistent assertion was successful with the prior assertion. In Ohio, judicial estoppel applies where a

plaintiff: (1) asserted a contrary position; (2) under oath in a prior proceeding; and where (3) the prior position was accepted by the court. However, judicial estoppel does not apply when the party's prior inconsistent position was a result of mistake or inadvertence.

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### Member News

#### Zachary Pyers Named Capital University Law School "2016 Young Alumnus of the Year"

Reminger Co., LPA is pleased to announce that attorney Zachary Pyers was honored as the 2016 Capital University Law School "Young Alumnus of the Year" during the Eleventh Annual Alumni Recognition Luncheon on Friday, April 22nd. The Young Alumnus of the Year Award is given annually to a Capital University Law School J.D. alumnus who has made significant achievements in their legal occupation and has made notable contributions to the legal profession and the community. Zach received from Capital both his J.D., cum laude, in 2008 and his LL.M., Business, in 2009. He was presented with his award by Dean Rachel M. Janutis.

Zach is also still very involved with his alma mater. He serves as an advisor to Capital University Law School's Mock Trial Competition Team. In tandem with Reminger attorney Kevin Foley, Zach also developed and taught a new depositions course for the school in 2015. This course combined classroom instruction with practical exercises to teach necessary depositions skills, including preparing deposition strategies and outlines; preparing witnesses for depositions; and conducting and defending lay and expert witnesses.

[Read more](#)

**Tucker Ellis LLP** is pleased to announce **Susan Audey**, has been elected to Tucker Ellis's partnership.

[Susan Audey](#) practices in the area of general litigation. An Ohio State Bar

Association Certified Appellate Specialist, Ms. Audey serves on the Appellate Law Specialty Board. She also serves as counsel to the Civil Rules Committee of the Supreme Court of Ohio's Commission on the Rules of Practice and Procedure and teaches writing as an adjunct instructor at Cleveland-Marshall College of Law. She is the Vice Chair of the OACTA Appellate Advocacy Committee. Ms. Audey received her law degree with honors from Cleveland-Marshall College of Law. She received both her master's and bachelor's degrees with honors from Cleveland State University.

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