



OHIO  
ASSOCIATION  
of CIVIL TRIAL  
ATTORNEYS

*The Source for Defense Success*

# The UPDATE

*News & Practice Pointers from OACTA*

## SPRING 2012

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**REMINDER**  
Mark Your Calendars  
for the Next  
OACTA Board Meeting  
**May 19, 2012**

**SAVE THE DATE!**  
**Personal Injury  
Defense Seminar**  
**April 13th**  
State Farm Insurance

### President's Message



By Kevin Connell, Esq.  
2012 OACTA President

#### **OACTA: Covering All the Angles**

Legendary football coach Bobby Bowden was at the helm of the Florida State football program well into his 70's, and some would argue he coached a little too long. His age became a hot topic of conversation, but did not stop his son Tommy, who coached Clemson at the time, from imparting an important life lesson. When asked what he gave his dad for his 76th birthday, Tommy replied: "I decided to cover all angles. I sent him chocolate-covered prunes and a box of Depends."

Here at OACTA, we also like to make sure our members are informed and prepared, ready for success by covering "all the angles." Not only will you learn about what your fellow members are up to in our new "Member News" section, we are pleased to announce a new feature: the Judicial Corner. In this issue, you'll get to read a nice update on Erin Gay, a young lawyer who is doing great things. We also thought it would be nice for our members to get to know judges around Ohio on a more personal level. Tony Brown and Joe Borchelt have put a power-packed issue together including a perspective from the bench. We are very excited to receive and publish a submission from Judge Frank Forchione from the Stark County Common Pleas Court regarding a study he has conducted of Stark County jury verdicts from 2004 to 2011. This is enlightening, and useful information, especially if you are trying a case in Canton.

[Read More....](#)

Newark, Ohio  
[REGISTER NOW](#)

**Professional Liability  
Seminar  
June 15th  
OCLC  
Dublin, Ohio**

**Insurance Coverage  
Seminar  
August 2012**

**Golf Outing  
September 4th  
Pinnacle Golf Club  
Columbus, Ohio**

**2012 OACTA  
Annual Meeting  
November 8th & 9th  
Crowne Plaza Downtown  
Dayton, Ohio**

**Submit Articles  
to the  
Newsletter  
Committee:**

[Joe Borchelt](#)

[Tony Brown](#)

Send a Member  
Request  
[oacta@assnoffices.com](mailto:oacta@assnoffices.com)

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## Young Lawyers Committee

The OACTA Young Lawyers Committee welcomes Mary Pisciotta, of Nationwide in Columbus, as its new co-chair. Mary graduated from Denison University and Capital University Law School, and maintains a primary area of practice in insurance defense.



This year, the Young Lawyers Committee will focus on engaging members and increasing membership networking. To that end, the Young Lawyers Committee will be hosting "Happy Hours" in various cities across Ohio, including Columbus, Cincinnati, Dayton, and Cleveland. ALL OACTA MEMBERS ARE INVITED TO ATTEND!! We also encourage OACTA members to bring non-OACTA members to learn about the benefits of joining our organization. Please be on the lookout for additional information as it becomes available, including dates, times, and locations.

As a reminder, OACTA provides a free membership to law students and a reduced-dues membership for new attorneys. Please encourage any law student or young lawyer you know to join OACTA and the Young Lawyers Committee. 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 in which you are involved wants an OACTA Young Lawyers Committee member to attend an event and explain the benefits of being an OACTA member, please let us know.

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

### "TAKE-HOME" PREMISES LIABILITY ASBESTOS EXPOSURE CLAIMS - 2011 UPDATE

Carter E. Strang and Karen E. Ross  
Tucker Ellis & West LLP  
Cleveland, Ohio  
[Carter.Strang@TuckerEllis.com](mailto:Carter.Strang@TuckerEllis.com)  
[Karen.Ross@TuckerEllis.com](mailto:Karen.Ross@TuckerEllis.com)



#### Introduction

Increasingly, plaintiff attorneys are asserting "take-home" claims against product manufacturers and premises owners. As one plaintiff's practitioner noted, "[t]he housewife is the number one occupation listed for those now contracting mesothelioma." Emerging Sources of New Plaintiffs Defined at Asbestos Litigation Conference, The Record, by Scott Sabatini, March 13, 2009, quoting Anne Kearse of Motley Rice LLC. The trend is expected to accelerate as more "traditional" defendants become bankrupt.

#### [Read More ....](#)

## Construction Committee Update

### OHIO AUTHORIZES CONSTRUCTION MANAGER AT RISK STANDARD REQUIREMENTS FOR PUBLIC FACILITY CONSTRUCTION

On February 3, 2012, the Ohio State Architect's Office issued the final documents (the "Final Documents") for use with the Construction Manager at Risk ("CMR") project delivery system as part of Ohio's ongoing Public Construction Reform (the "Reform"). The Final

Documents include, among other items: form agreement for CMR (the "CMR Agreement"); a Guaranteed Maximum Price Amendment form (the "GMP Amendment"); and General Conditions for the CMR Agreement (the "General Conditions").

[Read More...](#)

## Law Student Diversity Scholarships Available

### OACTA 2012 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 **April 20, 2012**. Late or incomplete applications will not be considered.

Winners will be announced in June 2012. Scholarship recipients will be recognized at the OACTA Annual Meeting in November.

[Download Scholarship Application](#)

## Upcoming - New Judicial Corner Section!

### GET READY!

In the upcoming summer edition of The Update, OACTA will be including a new semi-regular section, the Judicial Corner. This section, similar to the Member Spotlight, will focus on a member of the Ohio or federal judiciary, and allow our members to get to know judges from across the state. The Update plans to include the Judicial Corner section in at least two issues each year. If you know of a Judge who may be interested in becoming the focus of a Judicial Corner, and if you are able to assist The Update in making contact with the judge, please email Update chairs, Joe Borchelt ([jborchelt@reminger.com](mailto:jborchelt@reminger.com)) or Tony Brown ([tonyb@bakerfirm.com](mailto:tonyb@bakerfirm.com)).

## Judge Forchione Article

### RECENT TRENDS IN SOFT TISSUE CASES

When I first began practicing, soft tissue personal injury cases were rather easy to resolve. Although there were no guidelines or measuring sticks for settlement, most insurance adjusters offered three times the medical bills and the case was disposed of quickly. However, two events took place in 1994 that changed the landscape of soft tissue cases: tort reform, and the McDonald's coffee case. The contentious debate on the rising costs of health care, coupled with trial lawyers tromping around the political and legislative landscapes, inspired Ohio to leap forward as a state leader in tort reform, limiting damages Plaintiffs might collect in civil lawsuits. Simultaneously, when a jury awarded \$2.9 million to an elderly woman who was scalded after spilling McDonald's coffee in her lap, the public was outraged and demanded changes in the legal system.



[Read More ....](#)

## Member Spotlight

### OACTA MEMBER SPOTLIGHT - ERIN GAY

Following several insightful comments by OACTA members at the 2011 OACTA Annual Convention, it became readily apparent to the editorial board of the Update that we had been remiss in failing to feature a young and upcoming OACTA member in our "Member Spotlight" section. While not taking away from the seasoned attorneys previously featured in the Member Spotlight, to our chagrin, we were put in contact with a bright, vibrant and well-rounded young attorney with Young & Alexander in Dayton, Ohio - Erin Gay. As you will see below, even at this early stage of her career, Erin has managed to balance her busy docket, active personal life, and a sense of support for important initiatives in her community.



[Read More ....](#)

## 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.

Starting in 2012, 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](mailto:tonyb@bakerfirm.com)), or Joe Borchelt ([jborchelt@reminger.com](mailto:jborchelt@reminger.com)).

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

### **LEVENDUSKY JOINS SMITH MARSHALL, LLP**

Smith Marshall, LLP takes pleasure in announcing the addition of William J. Levendusky as an associate with the firm. Mr. Levendusky is a 2011 graduate (cum laude) of Case Western Reserve University and will be focusing his practice on civil litigation, predominantly insurance defense.

### **OHIO SUPREME COURT APPOINTS OACTA MEMBERS TO COMMISSION ON THE RULES OF PRACTICE AND PROCEDURE**

OACTA is proud to announce that two of its members, James L. McCrystal, Jr., and Anne Marie Sferra, have been appointed to serve on the Ohio Supreme Court's Commission on the Rules of Practice and Procedure.

### **Read More ....**

### **DAVIS & YOUNG ANNOUNCEMENTS**

The law firm Davis & Young recently announced that on April 1, 2012, it will open its new Columbus, Ohio office. OACTA members ***Richard M. Garner, Brian J. Bradigan, and David W. Orlandini***, are among the Davis & Young attorneys who will practice out of the new Columbus office.



Richard Garner      Brian Brandigan      David Orlandini

Davis & Young also recently announced the election of OACTA member, ***Thomas W. Wright***, as Davis & Young's Managing Partner/President, effective January 1, 2012. Also, OACTA member, ***David J. Fagnilli*** was promoted to Davis & Young's Chief Financial Officer.

OACTA congratulates Thomas Wright and David Fagnilli for their respective election and promotion, and Davis & Young as it opens its

Columbus office.



Thomas Wright      David Fagnilli

**TUCKER, ELLIS & WEST RECOGNIZED FOR CHARITABLE EFFORTS**

The law firm of Tucker, Ellis & West, LLP, which includes a number of active OACTA members, was recognized for its charitable efforts in the March 2012 issue of DRI's For the Defense magazine. Tucker, Ellis & West was one of a few firms who sponsored "Jeans Days" and collectively raised over \$9,000 for Operation Gratitude. Operation Gratitude is a charitable organization that sends care packages to U.S. Troops deployed to hostile regions, and to the children of deployed military personnel. OACTA is constantly proud of its members for their charitable efforts. Well done, to our members at Tucker, Ellis & West!