THE QUARTERLY

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THE OHIO ASSOCIATION FOR JUSTICE JANUARY 2020 ISSUE 1

FEATURES

PENDING IN THE SUPREME COURT

Menorah Park Ctr. For Senior Living v. Rolston

Meadows v. Jackson Ridge Rehab. & Care

AB INITIO

Role Reversal: Insights from Jury Service

MASS TORTS

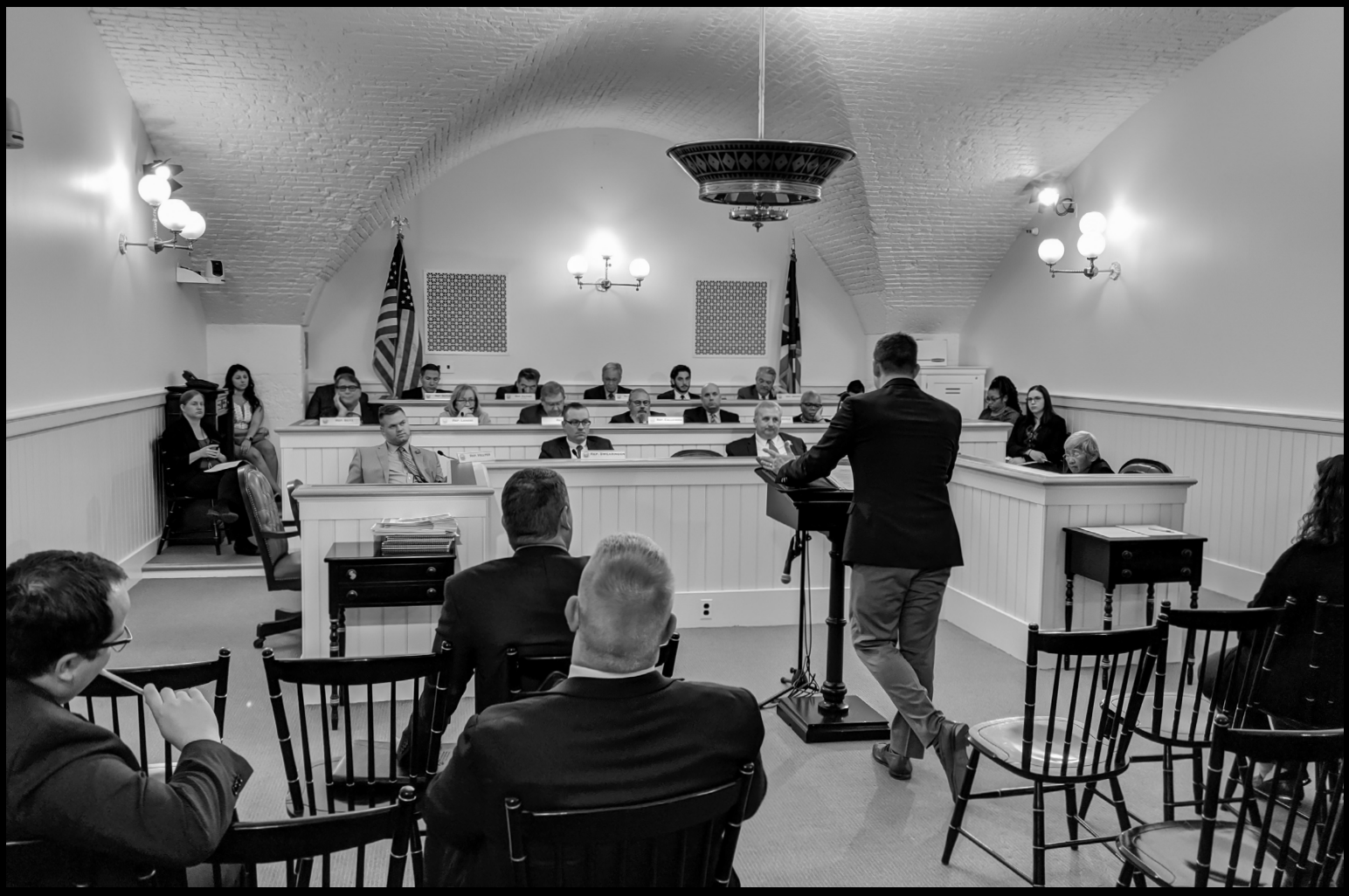
Liens: How Mass Tort is (Nothing) Like Single Event

EMPLOYMENT LAW

New Overtime Rules for 2020

MEDICAL MALPRACTICE

Using Focus Groups to Overcome the 800 Pound Gorilla(s) in Medical Malpractice Cases



Quarterly

January 2020

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Table of Contents

Pending in the Supreme Court	8
Ab Initio	9
Employment Law	10
Mass Torts	11
Medical Malpractice	12
Workers' Compensation	13

PAST PRESIDENTS

Sam Z. Kaplan	1957	William Zavarello	1988
Maurice Shapiro	1958	Frank A. Ray	1989
Joseph Williams	1959	Jay Harris	1990
Morton Reeves	1960	Paul O. Scott	1991
Robert W. Lett	1961	Martin W. Williams	1992
R.C. Norris	1962	Andrew P. Krembs	1993
Ben Horn	1963	Thomas H. Bainbridge	1994
Russel H. Volkema	1964	Clair M. Carlin	1995
Russel H. Volkema	1965	Dale K. Perdue	1996
Richard M. Markus	1966	J. Thomas Henretta	1997
Robert Disbro	1967	James D. Dennis	1998
Henry Maser	1968	J. Michael Monteleone	1999
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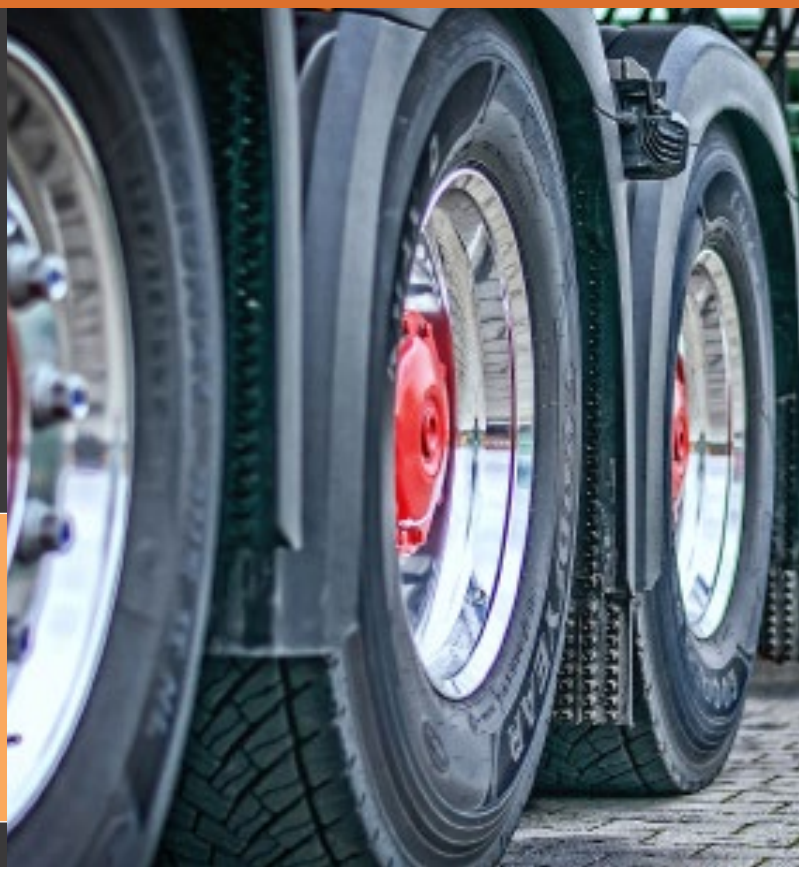

PENDING IN THE SUPREME COURT

Pending in the Ohio Supreme Court
Michael S. Miller, Esq., Columbus, OH

***Menorah Park Ctr. For Senior Living v. Rolston*, Supreme Court Case No. 2019-0939, (Ct. App. Cuyahoga Cty., 2019-Ohio-2114)**

Menorah Park Center for Senior Living filed a complaint against Irene Ralston to recover a debt for healthcare services. The statement of the claim alleged that Ms. Ralston owed the outstanding balance for therapy services that were provided by Menorah Park, and attached to the complaint was an unredacted copy of an account billing statement that describe the medical services provided, the dates the services were provided, the medical procedure codes, and the charges, credits and balances on the account. Ms. Ralston filed an answer and a class-action counterclaim for breach of confidence for the unauthorized disclosure of nonpublic medical information.

Menorah Park filed a motion to dismiss the counterclaim, arguing that it could not be held liable because the Health Insurance Portability and Accountability Act of 1996 permits the disclosure of protected health information for the purpose of obtaining the payment of medical bills, such that its actions were entirely within HIPAA, and that HIPAA did not allow a private right of action for alleged violations. Ms. Ralston argued that she was making a common-law state law claim and was not making a claim under HIPAA, and that, in any event, the defendants were not protected by HIPAA because, pursuant to the applicable regulations (45 CFR 164.502(B)), Menorah Park was required, but failed, to make reasonable efforts to limit the disclosure of protected health information to the minimum necessary for the purpose of collecting for the unpaid medical bills. Ms. Ralston contended that the disclosure was not authorized by HIPAA, and that HIPAA did not preclude her common-law claim for the unauthorized, unprivileged disclosure of nonpublic medical information that was recognized by the Ohio Supreme Court in *Biddle v. Warren General Hospital* 86 Ohio State 3d 395.

The trial court granted the motion to dismiss, but the Court of Appeals for Cuyahoga County reversed and held that Ms. Ralston's common-law tort claim for the unauthorized, unprivileged disclosure to third parties of nonpublic medical information was not preempted by HIPAA, and that, construing the allegations in favor of Ms. Ralston, the complaint set forth a claim under the Ohio Supreme Court's holding in the *Biddle* case.

On appeal to the Ohio Supreme Court, Menorah Park advances the following proposition of law, which the Court, over the dissents of Chief Justice O'Connor, and Justice Stewart, agreed to review.

> **Proposition of Law No. 1**: The Health Insurance Portability & Accountability Act (HIPAA) preempts a common law claim brought under *Biddle v. Warren General Hospital*, 86 Ohio State 3d 395, 715 N.E. 2d 518 (1999), for disclosure of protected health information where the limited disclosure was for the purpose of obtaining payment on a past-due account, which is an "authorized disclosure" under HIPAA regulations.
>
> **Proposition of Law No. 2**: A claimant's reliance on a HIPAA regulation to determine whether the release of protected health information was "unauthorized" for the purpose of pursuing a common-law claim under Biddle would allow private enforcement of HIPAA regulations, which is contrary to overwhelming legal authority that HIPAA does not provide a private right of action for improper disclosures of medical information but rather provides civil and criminal penalties which must be enforced by the Department of Health and Human Services.

***Meadows v. Jackson Ridge Rehab. & Care*, Supreme Court Case No. 2019-1197, (Ct. App. Stark Cty., 2019-Ohio-2879)**

The plaintiff brought a claim under the Employment Income Retirement Security Act of 1974 ("ERISA"), seeking the reimbursement of medical expenses she incurred as a result of the allegedly improper cancellation of her health care coverage and the interference with her rights to use the health care coverage, and also asserted causes of action for breach of contract and bad faith. The plaintiff did not assert any breach of fiduciary duty claim.

The plaintiff ultimately recovered a judgment in the amount of $73,357.05 plus interest, along with attorney fees in the amount of $19,000, and the defendants appealed to the Stark County Court of Appeals seeking to have the judgment vacated on the ground that the state court lacked subject matter jurisdiction over the ERISA claims.

The Court of Appeals affirmed the decision of the trial court, holding that, pursuant to the decision of the Ohio Supreme Court in *Richland Hospital, Inc. v. Ralyon*, 33 Ohio State 3d 87 (1987), state and federal courts had concurrent jurisdiction to determine benefits and award attorney fees in ERISA cases, although the state courts had no jurisdiction to determine what the Ohio Supreme Court called "extracontractual benefits," such as punitive damages.

Click here to continue reading on page 14...

Role Reversal: Insights from Jury Service
Amy Herman, Esq., Cleveland, OH

It is very rare that we are literally able to put ourselves in a juror's shoes. As trial attorneys we conduct focus groups, retain jury consultants and devour articles on the latest jury psychology and trends, all in an effort to better understand the jurors we encounter in the courtroom. Three years ago I had the privilege of sitting on a jury in a week-long criminal case and it was an extremely interesting and rewarding experience. As a trial attorney, it was an invaluable look into the experiences of jurors.

It is very rare that we are literally able to put ourselves in a juror's shoes.

The 7th Amendment guarantees the right to a trial by your peers in a civil case. As trial attorneys, we spend hours honing our presentation skills for the times we find ourselves in front of a jury. It is easy to get wrapped up in trial preparations and forget about what a unique experience a trial is for the juror. Simply going to the courthouse is new, different and often inconvenient for many jurors. They may not know where to go, where to park, or what to expect. They may be nervous about answering questions in a courtroom in front of a judge and a room full of strangers.

The week I found myself in the jury box I was hit by the realization that it is very difficult for jurors to stay focused and engaged during the entire trial. Hours of testimony can become dull and monotonous. To combat this, incorporate visual aids or multimedia whenever possible. You can also get your witnesses off the stand to demonstrate while they are explaining. Keep in mind that we get to stand up and move about the courtroom during a trial but jurors do not. In our case, we had a judge who took frequent breaks so the jurors could get up and move around. From the attorney's perspective this can be an annoying delay, but from the juror's perspective this is much appreciated.

It is important to keep your direct examinations short, sweet and to the point. In addition, repeatedly drill home the strongest points in your case so they stick with the jurors. During my jury service the judge did not allow us to take notes, which meant all we had in the deliberation room was our recollection of the testimony. For this reason, themes are very helpful because they are easy for the jurors to remember.

As a member of the jury, I saw firsthand how other jurors watched and reacted to the attorneys in the courtroom. Jurors pay very close attention to how we interact with our clients. The importance of body language cannot be stressed enough, especially if the jury box is close to your trial table. A number of my fellow jurors commented on the attorneys' clothes. We have all heard this before, but it is worth repeating. Take care in what you wear to trial; jurors do notice. During a break in our trial, two of my fellow jurors were discussing the red socks one of the attorneys had on that day. A few jurors also commented on the fancy suit one of the defendants wore to trial. In retrospect, I think the defendant's suit worked against him because we eventually convicted that defendant.

The jurors I served with all wanted to follow the law and reach the correct conclusion. They took their duty seriously. In our case, we reached a unanimous verdict after a few hours of deliberation. When deliberations began, I was surprised that the vast majority of my fellow jurors had already made up their minds. As trial attorneys it is our job to empower jurors and give them the evidence they need reach the right conclusion. It was comforting to know that juries want to do the right thing, and it is our job to help them do just that.

New Overtime Rules for 2020

Rachel Sabo Friedmann, Esq., Columbus, OH

In September of 2019, the Department of Labor released highly anticipated changes to the Fair Labor Standards Act (FLSA) regulations surrounding overtime pay and compensation thresholds for employees generally. New FLSA overtime rules regarding which employees qualify to earn overtime pay take effect on Jan. 1, 2020. These rules have not been updated since 2004.

Briefly, here is what employees and employers must know.

HOW HAVE THE FEDERAL OVERTIME RULES CHANGED?

The new 2020 overtime pay rules update and increase the salary test that determines who can earn overtime at a rate of one and one-half their regular hourly rate after working more than 40 hours during a workweek. The most important changes to the salary test are summarized in the following table.

	Old Rules in Effect from, 2004 through 2019	New Rules Taking Effect in 2020
Standard Salary Level Employee	$455 per week or $23,660 per year	$684 per week or $35,568 per year
Highly Compensated Employee	$100,000 per year	$107,432 per year

Old Overtime Rules vs. New Overtime Rules Taking Effect in 2020

Employers are now also permitted to use non-discretionary bonuses and incentive payments (including commissions) paid at least annually, to satisfy up to 10% of the standard salary level, recognizing that pay practices are always evolving.

This means that in order for an employer to classify an employee as exempt from overtime (meaning they do not qualify to earn OT), they must earn at least $684.00 per week or $35,568.00 per year. Employees that are exempt from overtime must also fall into one of the following exemptions in order to not be paid overtime:

1) Administrative Exemption
2) Executive Exemption
3) Professional Exemption

More on these exemptions can be found here: https://www.dol.gov/whd/overtime/fs17a_overview.pdf

The DOL estimates that this will make 1.3 million workers eligible for overtime pay.

Most workers should be treated as standard salary level employees when determining overtime eligibility. Highly compensated employees include people like IT staffers and network administrators who typically get paid by the hour at rates that can exceed $100 per hour.

Salary tests also exist for individuals who work in the movie industry and for public safety employees such as police and firefighters.

WHAT DIDN'T CHANGE?

The only thing that has changed is the amount of money an employee can earn before he or she loses eligibility for overtime pay. The chart above illustrates those changes. This means that:

- The overtime rate remains 1.5 times an employee's regular hourly rate;
- Tipped employees such as restaurant servers and bartenders remain eligible for overtime;
- Employers cannot automatically declare salaried employees exempt from earning overtime pay;
- Duties tests remain in place and unchanged for executives, administrative personnel, learned professionals, creative professionals, computer employees, and outside salespeople;
- Duties tests apply to both salaried employees and employees who get paid by the hour;
- An employee must pass both the applicable salary test and duties test to qualify for overtime pay from January 1, 2020 forward;
- An employer cannot categorize an employee as an executive, administrator, etc. solely to make that person ineligible to earn overtime;
- Employees can sue employers for unpaid overtime;
- Employers who are found to violate federal overtime rule can be made to pay back wages with interest, liquidated damages, and attorney fees for employees.

Many unpaid overtime cases involve misapplications of duties tests, meaning an employer may classify an employee as exempt when he or she is truly non-exempt and should be earning overtime pay. An examination of the actual job duties, not the job title, will dictate whether you are eligible for overtime pay.

OHIO WAGE LAWS WILL STAY THE SAME

New 2020 FLSA overtime pay rule does not change anything about Ohio's laws regard the minimum wage or overtime rates, aside from those explained above.

Liens: How Mass Tort is (Nothing) Like Single Event

Ryan J. Weiner, Esq., Chief Operating Officer of MASSIVE: Medical and Subrogation Specialists, Southfield, MI

Lien resolution in Mass Torts is unique in certain respects, and yet, virtually identical to single event lien resolution in others. Understanding that dual nature of mass tort lien resolution is the key to resolving mass tort liens quickly, and more importantly, disbursing settlements faster.

While preparation is paramount to success, perhaps the defining characteristic of mass tort lien resolution is the option to exchange information with lienholders in bulk. Some major subrogation firms will work with a lien resolution administrator to create Lien Resolution Programs (LRP) and Medicare will do the same with its global resolution programs. These programs allow information to be exchanged en masse and typically include pre-negotiated discounts and caps, thereby avoiding lien-by-lien negotiation and allowing liens to be finalized much quicker. Taking advantage of these programs can be hugely advantageous and lead to faster settlement disbursements.

Proper Setup is Paramount

All of those advantages can be reached if the law firms and lien resolution administrator take the time to properly set up a program. Beginning the process early ensures timely and accurate results. Understanding that process allows for greater success. First, every mass tort lien resolution project begins with a large push of information to potential lienholders. To ensure the better results, it is critically important to have complete client and injury information at the outset. This information includes everything plaintiff-related from name and date of birth, to Social Security Number, and settlement category details (most mass tort settlements separate injury types into "injury categories" to simplify the settlement allocation process).

Then, a Lien Resolution Program can be used to find a large number of lien holders with limited plaintiff insurance information. LRPs are a way of efficiently exchanging large amounts of information and finalizing liens quickly pursuant to pre-negotiated terms. The exact manner in which LRPs run differs depending upon the subrogation firm involved, but the basic process usually looks something like this:

1. Negotiate terms –Typical terms include an automatic reduction of all liens by X%, and a cap stating that no lien shall exceed Y% of a plaintiff's settlement. Sometimes terms will include additional reductions or waivers that are dependent upon factors like settlement amount, lien amount, or the existence of additional liens.
2. Information exchange – This is normally done via spreadsheet and simply involves supplying a list of clients and their pertinent information (including DOB, SSN, injury details, etc.) to the subrogation firm. The subrogation firm will then identify all claimants who are beneficiaries under one or more of their represented plans, compile the claims for those individuals, and send those claims to the lien administrator for audit. Audits are sent back and forth until both sides agree on a set of related claims.
3. Calculate final lien amounts – when audits are complete the negotiated terms are applied to the approved totals to determine final repayment amounts.

LRPs do not work flawlessly for every claimant. No LRP can anticipate every possible contingency and complications sometimes arise, making it necessary to negotiate some LRP liens outside the terms of the program. However, LRPs work the way they should for the majority of claimants, making it possible to resolve a large number of liens in much less time than it would take to negotiate them individually.

Nearly as important as the terms is authorization. Even when those terms are completed, a lack of authorization can single-handedly stop the lien resolution process in its tracks. This roadblock is HIPAA, where lien holders cannot give individual data that is HIPAA protected without some sort of authorization.

Solving HIPAA in Mass Tort

The lack of a properly executed, HIPAA-compliant authorization is probably the most common long-term delay. While having individual signed HIPAA authorizations at the outset is hugely beneficial, one way to avoid this pitfall entirely is by petitioning the court for a Qualified Protective Order (QPO). These orders eliminate the need for an individual, signed, HIPAA authorization on behalf of each client.

A QPO grants authority to an entity, such as a lien resolution administrator, to request and obtain the lien information for a firm's entire client inventory from all health insurance carriers.

The authority for the QPO is derived from the HIPAA Privacy Rule. 45 CFR 164.512(e) states that an entity may disclose personal health information in response to a court order, or absent a court order if the party seeking the information provides satisfactory assurance that reasonable efforts have been made to secure a qualified protective order.

Click here to continue reading article on page 14...

Using Focus Groups to Overcome the 800 Pound Gorilla(s) in Medical Malpractice Cases

Allen Tittle, Esq., Cleveland, OH

For those who practice in the world of medical malpractice, we can all agree that one of the most challenging aspects of handling these cases is negative attribution from jurors. Generally, negative attribution comes in two forms in the eyes of jurors: 1) "This could never happen to me," or 2) "I would have made different choices than the plaintiff made, such as getting a second opinion." This 800-pound gorilla, or more likely gorillas, is often times (and in my opinion, the majority of the time) the reason why we take it on the chin at times on our side of the "V". So, what do we do about it? Focus groups!

Identifying Negative Attribution in Our Cases

The first obvious step is to identify what the negative attribution is in your case. There is only one way to do this – focus groups. The easiest is a narrative focus group.[1] A narrative focus group is simply a recitation of the facts in a non-adversarial manner. Often times, my firm will create a simple timeline of events (again, this must be completely neutral), followed by a group discussion. So, if the care at issue is short, we simply recite the facts and then carry out a guided discussion. If the care at issue is long, my firm creates an actual timeline (usually though power point), so that the focus group does not get bogged down in the facts, and then discuss. We have found that, generally, it takes an hour to an hour and a half to get through the process. In other words, in a three-hour focus group, we can run two narrative focus groups.

A narrative focus group is simply a recitation of the facts in a non-adversarial manner.

Most early narrative focus groups will lead to the focus group telling us that our case is terrible and why. In other words, the negative attribution jumps out and kills the case. But this is what we want – this allows us to know the target. Once we know what the negative attribution is in the case, we can begin to defeat it through framing. However, this is one word of caution – do not run one narrative focus group and think you identified all the negative attribution in your case. You must carry out multiple narrative focus groups in order to find out all areas of negative attribution. If you shortcut this step, you do so at your own peril.

Defeating Negative Attribution Through Framing and Testing in Focus Groups

Once you figured out all of the negative attribution in your case, it is time to figure out a way to frame your case to overcome it. The best way to do so is to focus on the defendant's conduct. My favorite way to do so is to frame my case/my opening using the "David Ball' opening template." See, *Damages 3* by David Ball. Hence, I frame the case in the following order: 1) rules; 2) defendant's conduct; 3) "why we are here;" and 4) undermining. In the undermining section, in addition to any issues you are aware of, you attack the negative attribution in your case head on. This is not as easy as one might think. Often times, this process takes days. But if you do it right, you will be rewarded.

Once you feel comfortable with your case framing, you go back to the focus group. This time, your focus group is much more formal – you carry out what's called a structured focus group. This is where each side gives a 20 to 30 minute "clopening," where aspects of opening and closing are combined. After each presentation, a neutral moderator comes in to guide the discussion and deliberation. A few words of advice when carrying this out: 1) for the plaintiff's clopening, try your actual opening for the first three-fourths of the presentation (if you are using the Ball opening, through the undermining section); and 2) the same presenter should do both sides. In other words, you should not have an attorney "represent" the plaintiff and another handle the defense side of things. This is the best way to avoid "presenter bias."

During the guided discussion, the moderator will determine what the most important facts were, what questions the focus group still has, the anger level of the focus group, and their ultimate "verdict." This discussion will let you know if you have properly framed your case or if you still have more work to do. The angrier you can get the focus group about what occurred, the better.

Defendants in medical malpractice cases start with the upper hand. They have the advantage of negative attribution, and, often times, do not have to do anything to bring it to the forefront. The only way we can overcome this is through identifying what the negative attribution is, properly framing our case, and then undermining it properly. For more information on Focus Groups, I would suggest reading "Focus Groups – Hitting the Bull's-Eye" by Miller & Scoptur, as well as buying the The Keenan Law Firm Ultimate Focus Group package.

End Notes:

1. If you are of the school of attorneys asking "why do we need focus groups? The legendary attorneys of the past never focus grouped a case," STOP! The "old timers" would try 10-15 malpractice cases a year. In other words, the actual juries served as their focus groups. Those days do not exist anymore. Instead, your mind has been poisoned through law school and only focus groups can set you straight!

VSSR: Special Considerations to Expand Your Evaluation of Possible Violations

Troy Duffy, Esq., Columbus, OH

In 2018, only 664 Violation of Specific Safety Requirement applications were filed with the Industrial Commission. In the same year, 85,136 state fund claims were allowed statewide. Based on filing numbers alone, one can conclude that less than .7% of state fund claims could plausibly have a VSSR component to them. The rate of possible VSSR claims to total allowed claims reduces significantly when you include self-insured claims as well. This might be the result of the provisions in Ohio Administrative Code 4123:1 being so restrictive as to exclude other scenarios where you would think a safety rule should exist, but does not. Or it might be the result of underutilization of the VSSR process.

There are several provisions in the administrative code and in case law that can help you expand your use of VSSR applications. Firstly, what qualifies as a "Workshop" or "Factory" in OAC 4123:1-5? In State ex rel. Burma Farms v. IC, 021893 OHCA10, 92AP-76 (10th Dist. 1993) injured worker suffered injuries to her hand from a conveyor belt while working in a three-sided building, with a permanent roof, and overhead lighting. The employer here argued that the nature of the work, and not the location of the injury, should be the controlling factor in determining if a VSSR chapter applies. The Court held that:

> It is the nature of the work environment and the precise risk to which the claimant is subjected that determine the applicability of safety requirements and not the general classification or calling in which the claimant is employed. The safety requirements applicable in this case are intended to prevent the very injury sustained by the claimant. The fact that the setting of the claimant's injury was located on a farm does not relieve the employer from obligations imposed by specific safety requirements applicable to workshops.

This was expanded upon by the Ohio Supreme Court in State ex rel. Petrie v IC, 85 Ohio St.3d 372 (1999). In a short opinion, the Court noted, in holding that the fenced in work area of a scrapyard was a "workshop," that "(t)he fence, in this case, indeed set forth the boundaries of work activity. It also served to keep unauthorized nonemployees out, and, in so doing, established its confines as a place accessible only to employees for the purpose of carrying out the company's business."

Reading through the safety requirements in the Workshops and Factories chapter, you'll find regulated activities that cannot reasonably be completed indoors, and likely not even in a fenced in area. The Supreme Court tackled this issue as well in State ex rel. Parks v. IC, 85 Ohio St.3d 22 (1999). The injured worker was employed by the city of Toledo's Forestry Division, and received an electrical shock from a power line while trimming a storm damaged tree. In his VSSR allegation, he cited to OAC 4123:1-5-23(E)(1) and (2) which require employers in the "electric utility and clearance tree-trimming industries" to provide certain safety measures.

There was no indication that the above requirement in Petrie was met, as Mr. Parks was outdoors and up a tree at the time of his injury with no mention of an enclosed fence. The Court noted, "(t)he risk presented by the combination of clearing tree limbs in the vicinity of power lines rarely, if ever, occurs indoors. Thus, imposing the general "workshop or factory" limitation on the rule regulating this activity would essentially eliminate the application of the entire provision." They further reasoned that,

> "Buurma Farms and Waugh establish that, where specific safety requirements regulate activities that can be performed indoors or outdoors, the Ohio Adm.Code 4121:1-5-01(A) workshops and factories restriction limits an employer's reasonable expectations of liability to VSSRs that are committed indoors. However, the rule must be different where activity is regulated but cannot be performed indoors. In that case, the employer cannot reasonably expect exemption because Ohio Adm.Code 4121:1-5-01(A) does not apply exclusively to workshops and factories."

For activities that are regulated in the Workshops chapter that cannot be performed indoors, the employer cannot argue that the activity did not occur in a "workshop" such that they would be exempt from complying with the safety requirement.

Once you file a VSSR and receive an employer's response, be sure to review their position. They will often allege that the specific section does not apply, or that the injured worker's unilateral negligence bars recovery on the VSSR. We're all aware that Workers' Compensation in Ohio is a no fault system. But, do what extent does unilateral negligence protect an employer from a VSSR finding? The negligence of the injured worker is irrelevant to the allowance of the claim. But, in the VSSR context, it must be considered in certain factual circumstances. The defense of unilateral negligence to a VSSR, however, has very narrow application.

Generally, an employee's negligence, folly, or absent-mindedness will not bar recovery for a VSSR. E.g. State ex rel. Cotterman v. St. Mary's Foundry, 46 Ohio St.3d 42 (1987).

Click here to continue reading on page 15...

Pending in the Ohio Supreme Court continued from page 8...

On appeal to the Ohio Supreme Court, the defendants set forth the following proposition of law, which the Court, over dissents of Chief Justice O'Connor and Justices Kennedy and DeWine, has agreed to review (the Court declined to review a second proposition of law relating to service and default judgments):

> **Proposition of Law No 1**: Claims for retaliation and/or interference brought under section 1140 of ERISA are within the exclusive jurisdiction of the federal courts.

Mass Torts article continued from page 11...

Interestingly, the rule does not require that the order actually be granted before an entity is allowed to release information. Proof that the order has been requested should be sufficient.

Remember to keep a few points in mind when drafting a QPO. The Privacy Rule requires that the order prohibit parties from using or disclosing the information for any purpose other than the litigation for which it was requested. It also requires the return or destruction of the information upon the conclusion of the litigation. In addition to this required language, it is essential to include a comprehensive list of all potential entities to which the order applies. For example, if the order merely authorizes the release of information from "Medicare, Medicaid and Private Health Plans," an entity such as Tricare or the VA may refuse to comply because they don't fit within any of those categories.

Individual HIPAA authorizations can still assist where you have a QPO because some lien holders with less experience in mass tort (especially the smaller, individual plans) may not trust such a foreign order. The individual HIPAA can bypass their slow review of the QPO to speed the process.

Regardless, perhaps 95% of mass tort liens can be resolved with a QPO as the alternative to individual authorization.

Mass Tort's Single-Event Lookalike

Alternately, at times mass tort lien resolution will operate similarly to that of a single event case. There will always be private insurance companies and entities such as Tricare and the V.A. which do not participate in LRPs or global programs. Timeframes for resolution of these types of claims vary extensively. Each of these programs understands the lien process – but that doesn't mean they operate quickly. The deliberate (slower) allocation and distribution process of mass tort can allow lawyers and lien resolution administrators can take advantage of additional time. Begin the process early. Often times, final liens can sit and await payment even if the case cannot yet be disbursed.

Keys to Success: Preparation

If missing information and authorization is the path to failure, success can be found in organization. Mass torts are often massive undertakings. You may be missing something where you think you have the documentation you need. Use a case management software platform to organize your plaintiff data and authorizations. Note bankruptcy or probate issues in advance. Save plaintiff health insurance cards and more. The more information you have, the more successful you will be when it comes to post-settlement client retention. Think about it – plaintiffs are more likely to agree to the settlements when they have a basic picture of their final take-home amount. That information is at your fingertips if you stay organized.

Ultimately, a mass tort settlement, like any other settlement, is only successful if the clients walk away happy (and hopefully willing to leave you a five-star review). Our abilities to stay organized and deliver a smooth post-settlement process can finish that successful process and push us all to additional future successes.

Workers' Compensation article continued from page 13...

A unilateral negligence defense has a two-part test. First, the employer must have complied with the applicable safety requirement. Second, the employee deliberately rendered an otherwise complying device noncompliant or nonconforming. See State ex rel. Coffman, 2005-Ohio-1519 ¶ 7 (also State ex rel. Quality Tower Serv., Inc. v. Indus. Comm., 88 Ohio St. 3d 190, 192, 724 N.E.2d 778 (2000)) So, an employer cannot claim unilateral negligence by the injured worker if they did not comply with the requirements in the first place.

Generally, the Workshops and Factories chapter is much more expansive than you might at first think. Whether your client was injured in a building, outdoors in a fenced in area, or doing the type of work that can only be done outdoors, the above cases support the appropriateness of a VSSR application. And don't let an employer argue your client was negligent when they couldn't be bothered to comply with a safety rule in the first place!