

## MEDICAL MALPRACTICE ALERT

11/11/13

### Roetzel Appellate Specialist Doug Leak Obtains Favorable Supreme Court Decision for Physician-Client Establishing Precedents for Defense of Medical Negligence Lawsuits

Roetzel's Board-Certified Appellate Specialist, Doug Leak, obtained a favorable decision from the Ohio Supreme Court on October 24, 2013 in *Moretz vs. Muakkassa*, Slip Opinion No. 2013-Ohio-4656, which held that a physician in a medical malpractice case was denied a fair jury trial as a result of several errors committed by the trial court. In reversing an adverse jury verdict and court of appeals decision, the Ohio Supreme Court remanded the case for a completely new trial, holding that the trial court abused its discretion in a number of ways, which deprived the physician of a fair trial by jury. The decision of the Ohio Supreme Court in *Moretz* is especially important because the Court clarified several longstanding legal debates on issues pertaining to the trial of civil matters.

After extensive briefing and oral arguments by Doug Leak, the Ohio Supreme Court agreed with the position taken by Mr. Leak on behalf of the physician. In its decision, the Ohio Supreme Court set forth three holdings that will be invaluable to the defense of medical malpractice cases, as well as other civil lawsuits, in the future:

- When both the content and the form of a proposed interrogatory are proper, Civ.R. 49 imposes a mandatory duty upon the trial court to submit the interrogatory to the jury, in order to be able to test the findings of the jury to the evidence produced at trial.
- R.C. 2317.421 applies equally to plaintiffs and defendants and as such, the defense is not required to produce expert testimony for the admission of evidence of write-offs reflected on medical bills and statements. Instead, documentation by medical providers as to the amount accepted as full payment for a medical service is *prima facie* evidence of the reasonable value of medical services and admissible at trial.
- Illustrations from medical textbooks are subject to the learned-treatise hearsay exception set forth in Evid.R. 803(18) and therefore shall not be admitted into evidence as an exhibit over the objection of a party.

With the *Moretz* decision in hand, all litigants and courts in Ohio can rely upon the decision when addressing these three legal issues.

To read the full text of the Supreme Court's decision, please click [here](#). To view Doug Leak's oral argument before the Supreme Court, please click [here](#).

For further information regarding the *Moretz* decision and its implications for the defense of medical malpractice claims, please contact the following Roetzel attorneys:

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