

## 2024-2025 BOARD OF DIRECTORS

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## UPCOMING EVENTS

Tuesday, May 13, 2025  
**Annual Membership Luncheon**  
12:00 p.m. – 1:30 p.m.  
@ The Boat House  
679 W. Spring Street  
Columbus, Ohio 43215

### COAJ Mission

To promote justice for individuals in all local, state, and federal courts; to support our membership; to assist the legal community; to improve the judicial system; and to serve the citizens of Central Ohio.

### HB 338

The Ohio legislature recently enacted HB338, which allows the Court to issue, modify, or extend child support for children over 18 years old with a disability. This law codifies decades-old case law in *Castle v Castle*, 15 Ohio St.3d 279 (1984). This bill was signed by the Governor on December 19, 2024, and will be effective 90 days from the date of signature.

### OHIO CASE NO. 23AP-444

*Mohamed Badawi, Administrator of the Estate v. The Ohio State University Wexner Medical Center*

This was an infant wrongful death case against OSU Wexner Medical Center which was tried in the Court of Claims with Judge Sheeran. It was defended by the AG's office and Greg Foliano. The civil case was prosecuted by lead counsel David Olesky and Carrie Vine of the Texas firm, Miller, Weisbrod, Olesky and Mark Kitrick of The Law Firm of Kitrick, Lewis & Harris. Larry Lassiter of the Olesky firm handled the appeal, along with Mark Kitrick.

Dr. Badawi's wife, Sara Elshazli who was 40 weeks pregnant and who had a delivery plan known as "trial of labor after cesarean section" (TOLAC) had unusual signs of labor in June of 2018 and she and her husband Dr. Mohamed Badawi insisted something was wrong and wanted a C-Section. The OSU employees and doctors were negligent by failing to act swiftly which was required for her situation, among other negligent acts, and a uterine rupture occurred. The baby, named Malek (meaning ANGEL) was born with severe neurological injuries and was pronounced dead the next day due to hypoxic-ischemic encephalopathy. After an almost 5-week zoom trial with Judge Sheeran, in a lengthy decision he rendered a favorable Decision for the Estate and awarded a total of \$2,750,000. The State of Ohio appealed the Decision alleging six (6) assignments of Error. As of last June 2024, the Court of Appeals Tenth Appellate District found in favor of the Estate (the Appellees) on all six assignments. The State of Ohio then appealed to the Ohio Supreme Court and the Ohio Supreme Court denied cert. The compensation award was recently approved by the Franklin County Probate Court with attorney Jay Michael as the successor Administrator and the final distribution to the Badawi family happened not many weeks ago. It took essentially six (6) years for the Plaintiff Estate to win this historical, unprecedented verdict against the State of Ohio for this type of case.

### Medical Malpractice Damage Caps are Unconstitutional

The Eighth District Court of Appeals recently held the \$500,000 cap on damages for permanent injuries is unconstitutional, as it is unreasonable, arbitrary, and burdens those most severely injured by medical malpractice in order to provide some unrealized benefit to the general public. See *Paganini v. The Cataract Eye Center of Cleveland, et al.*, 2025-Ohio-275 (8th Dist.). To illustrate the arbitrary nature of R.C. 2323.43(A)(3)'s cap on noneconomic damages, the court of appeals cited to a Franklin County Common Pleas Court decision, which compared this cap on damages to R.C. 2315.18, which does not limit noneconomic damages for permanent injuries:

*If a man's leg were cut off by a doctor in surgery and he sought noneconomic for the catastrophic injury, the damages would be limited to \$500,000 under R.C. 2323.43(A)(3). Yet, if the same man were to be run over and lose his leg by the same doctor on the way home from the hospital after a successful surgery, that man could recover all noneconomic damages for his catastrophic injury because R.C. 2315.18 has no additional limit. This is not reasonable or logical. The exact same injury inflicted by the same person should yield the exact same damages, but under the current statutory scheme it does not*

This is the first appellate decision on this issue but is consistent with all trial court decisions that have been rendered throughout the state, including several from Franklin County.

### Notable Opinions from the Southern District in Ohio

**In re Micheal G. Long and Jennifer L. Long (24-30074)** – *Memorandum Order Denying Debtors' Amended Motion to File Under Seal*. Upon review of the Debtors' Amended Motion to Seal and the United States Trustee's Objection, the court concludes that the Debtors have failed to establish a basis under 11 U.S.C. § 107(b) to seal the documents at issue. The strong presumption is to allow the public access to all papers filed in Bankruptcy cases, and Section 107 carves out two exceptions – 1) protect trade secrets, confidential research or commercial information; or 2) protect a person with respect to scandalous or defamatory matter contained in the filed papers; or 3) such disclosure would create a risk of identity theft to the individual or the individual's property.

**In re Mark Vincent Carducci (24-53329)** – *Order Denying Motion to Vacate Order of Discharge*. The Court denied a request to vacate the discharge order to allow the Debtor to file a Reaffirmation Agreement. The agreement was not signed until the date of discharge (which is required), so the court stated that the reaffirmation agreement was not made prior to discharge and there was an insufficient basis to vacate the discharge order.