CASE	MAIN ISSUE	STATUS	BACKGROUND	OTHER ISSUES
Semsker (Semsker v. Lockshin)	Is there a non-economic damages cap on Medical Malpractice cases filed in Circuit Court? Or Does the Medical Malpractice cap (§3-2A-09 CJP) on non-economic damages only apply in Health Claims Arbitration (now known as HCADRO)?	• 11/2008 - Montgomery County Circuit Court– Verdict $5,805,000; reduced to $2,860,436 (due to joint tortfeasor offset – Trial Judge ruled the cap does not apply) • January, 2010 – Court of Appeals ruled in favor of Health Care Providers on all counts: **1. cap on non-economic damages applies in cases that are not first arbitrated in HCADRO;** **2. Joint tortfeasor reduction is applied first, then the cap is applied; and** **3. Past medical expenses that have not and will not be paid, are not proper damages.** **Case is Concluded**	• Failure to diagnose melanoma in 46-year-old, married, male attorney who died from metastatic melanoma. • Case tried in Montgomery County Circuit Court. Plaintiff's verdict $5,805,000. One defendant settled at close of evidence. • Defense verdict for one dermatologist – Plaintiff's verdict against 2nd dermatologist and his corporation.	1. Do you apply the cap 1st, and then reduce by the joint tortfeasor release? 2. Does §3-2A-09 (d) (1) (reduces past medicals by amount of "write offs") require proof during trial?
Freed (Freed v. DRD Pool Service)	Is Maryland's Cap on non-economic damages for cases other than Medical Malpractice constitutional? (§11-109 CJP)	• 2007 - Trial in Anne Arundel County Circuit Court. Plaintiff's verdict for over $4 million. Cap was applied, reducing the verdict to $1.3 million (cap = $665,000). • **Court of Appeals held – cap on non-economic damages does not violate the Maryland Constitution. (September, 2010).** • Case was remanded to the Circuit Court for a determination as to the conscious pre-death pain and suffering of the drowning victim.	• Drowning death of 5 year old in June 2006, in a swimming pool at Crofton Country Club	1. Should trial court have permitted evidence of child's pre-death conscious pain & suffering?

		Case is Concluded		
McQuitty (McQuitty v. Spangler)	**Holding:** **Consent applies to all treatment decisions regardless of whether there is an invasion of the patient's physical integrity.**	• 2004 – Trial, Baltimore County, defense verdict on standard of care; hung jury on informed consent. • 2006 - Re-trial in Baltimore County Circuit Court, on issue of Informed Consent only. Plaintiff's verdict for $13,078,515 • Trial Court reversed the decision and overturned the verdict on informed consent. • Court of Appeals reversed and remanded the case back to the Circuit Court for a decision on reducing the verdict.	• Patient claimed the physician failed to inform her that her baby could have been delivered earlier, thus depriving her of informed consent. The baby was born with cerebral palsy.	1. Informed consent applies to all treatment decisions; 2. Informed consent is an ongoing process;
Waldt (Waldt vs. University of Maryland Medical System)	**Holding:** **Expert witness was properly excluded from testifying because he devotes more than 20% of his professional activities to activities directly involved in personal injury claims.** The court determined that 20.66% of the witness' professional time was devoted to personal injury matters.	• November 2009 – Court of Appeals ruled that the trial judge was correct in excluding the witness and granting summary judgment for the defendants.	• Patient suffered a stroke during procedure to treat an aneurysm in a blood vessel in the brain. • Plaintiffs had one standard of care witness, who was educated in France and had retired several years prior to the trial.	1. The Court of Appeals interpreted Section 3-2A-04 CJP – "the 20% Rule". The Court defined Professional Activities as: those activities that" contribute to or advance the profession to which the individual belongs" or involves "the individual's active participation in the profession." 2. The Court then stated that the amount of time annually devoted to activities that "directly involve testimony" is divided by the amount of time

		Case is concluded		spent on all "professional activities" and the result must not exceed 20%.
Kearney (Kearney v. Berger)	What is good cause for an extension of time under § 3-2A-04(b)(5) and 3- 2A05(j) for Plaintiff to file their Certificate of Merit? Was Plaintiff's Certificate of Merit in this case insufficient? Does a party waive its right to object to the adequacy of the Certificate of Merit if it does not raise the issue in its Answer to the Complaint?	• Plaintiff filed case in HCADRO and waived to Circuit Court. Circuit Court Judge granted defense Motion to Dismiss because Plaintiff's Certificate of Merit did not include a Report. • Plaintiff appealed to Ct. of Special Appeals, who held that Plaintiff should have been given an extension of time if good cause could be shown. • Trial Court held – good cause was not demonstrated and dismissed the case again. • Plaintiffs filed an Appeal with Ct. of Special Appeals. • **Court of Appeals Held -** 1. A Cert. of Merit must include the applicable standard of care and how or why the defendant deviated from it. It does not need to state that the expert satisfies the 20%	• Wrongful death case alleging failure to diagnose melanoma resulted in death of Plaintiff. • Plaintiffs filed a Cert. of Merit, but did not file a Report. Plaintiff filed for an extension of time after the defense filed a Motion to Dismiss for failure to file a Certificate of Merit, and two years after the Cert. of Merit was due. **Case dismissed without prejudice**.	1. Can a Party request an extension of time to file a Certificate of Merit after 180 days have passed since the filing of the Claim? 2. Does a party waive its right to object to the adequacy of a Certificate of Merit if it does not raise the issue in its Answer?

		rule and it does not need to state that the opinions are held to a reasonable degree of medical probability. 2. The defendant did not waive its right to object to the COM by not including the objection in his answer. 3. The trial court did not abuse its discretion when it denied Plaintiff's request for an extension of time to file a COM. **Case is concluded.**		
Powell (Powell v. Breslin)	If a Certificate of Merit is inadequate due to lack of qualifications on the part of the certifying expert, is the remedy dismissal or Summary Judgment? Note: dismissal, if within the statute of limitations permits re-filing, while Summary Judgment is final.	• Plaintiff filed case in HCADRO and waived to Circuit Court. Plaintiff filed a Certificate of Merit in HCADRO. During discovery plaintiff's certifying expert, an anesthesiologist testified that he was unfamiliar with the standard of care of a Vascular Surgeon. • Defense moved for dismissal or Summary Judgment based on faulty Certificate of Merit. • Trial Judge entered an Order for Summary Judgment and Plaintiff appeals.	• Patient underwent hepatorenal arterial bypass procedure with epidural anesthesia. Post operatively epidural hematomas were evacuated, but the patient suffered neurological damage and paraplegia. He died over 2 years later.	1. If a Certificate of Merit is signed by an expert who is not qualified to sign the Certificate – is the remedy summary judgment or dismissal without prejudice?

		• **Court of Special Appeals held: Proper remedy is dismissal without prejudice. Notice of Appeal was filed with the Court of Appeals.** • **The Court of Appeals upheld the CSA opinion. If a Certificate of Merit has been signed by a physician who later is determined to have been unqualified to sign the certificate – the case should be dismissed without prejudice.** **Case is concluded**		
Bennett (Bennett v. Hashmi)	Holding: **A Release Agreement entered into by a hospital which clearly included all its employees is not subject to a post-trial judicial determination of the number of shares released, when the hospital employees were never defendants or cross-defendants.**	• Hospital and Emergency Group settled prior to trial. • Case was tried against Dr. Hashmi -- March, 2007. Verdict = $2,295,000 (reduced by cap to $1,795,000). • Verdict further reduced by 2/3 based on joint tortfeasor releases of Hospital and E.D. Group each counting as one share ($598,333.33). • Dr. Hashmi sought reduction by 4/5 arguing	• Patient was treated at an Emergency Department and admitted to the Hospital. He died the next day from an undiagnosed MRSA infection. • Emergency group and Hospital settled. Remaining doctor lost at trial. Joint tortfeasor reductions were applied to the verdict, reducing it by 2/3. Dr. Hashmi argued that the Hospital's share should be more than 1/3 as there were 3 separate Hospital employees involved.	1. Must defendants file cross-claims or third-party claims when an entity settles for one share when entity is responsible for more than one tortfeasor?

		that there were 3 separate shares for the hospital employees, and he should be only 1/5 responsible. **Case is concluded**.		
Spence (Spence v. Julian)	Can a defendant file an action for contribution or set-offs after a trial, without first filing a cross-claim or third party claim against the settling defendant?	• After the trial and verdict for the plaintiffs, Dr. Julian filed action against Mercy employees to establish joint tortfeasor shares. • Plaintiffs filed for injunctive relief. Circuit Court Held: Defendant had not waived right to assert a claim for set-off or contribution. There is no judicial finding against the Hospital on whether it is a joint tortfeasor. • Julian filed an action for Contribution in Circuit Court. • Hospital filed Motion to Dismiss Circuit Court action for contribution. • Circuit Court judge granted Hospital's Motion to Dismiss. • **Court of Special Appeals held that Dr. Julian's right to pursue a contribution action**	• Case involves the birth of an infant with injury who subsequently died from the injuries. • Case was tried in 2007. Verdict - $8 million, reduced to $2,186,342.50. • Hospital had settled prior to trial with a Release that did not establish joint tortfeasor status and refused to reveal the amount of the settlement.	Note: The Release executed by the Hospital provides that the Plaintiffs will indemnify the Hospital against any contribution claims.

		against the Hospital in a subsequent action is protected under Maryland law, given that the Release entered into by the Hospital did not acknowledge joint tortfeasor status. Therefore, Dr. Julian's contribution action is proper and will be reinstated. **We expect the Plaintiffs to file a Petition for Writ of Certiorari with the Court of Appeals**.		
Wantz (Reynolds v. Afzal)	What qualifications does an expert need to be able to testify on causation?	• The Trial Court granted the defense motion to dismiss the plaintiff's three causation experts because they were not qualified to render causation opinions. • Plaintiffs filed an appeal with the Court of Special Appeals. Judge Eyler issued an unreported opinion stating that the trial court had abused its discretion and that the experts were qualified under the Radman v. Harold case. • **Court of Appeals denied the defense Petition for Writ of Certiorari.** • **The case is remanded to the Circuit Court for trial.**	• Case involves alleged delay in diagnosis of a fracture of the spine (T10) in a 77 year old female. The patient developed a wound infection and died several months later.	

Johnson (Johnson v. Schwartz)	Did the trial court err in excluding evidence of informed consent, when the defendants included the affirmative defense of assumption of risk?	• The plaintiff did not include lack of informed consent in his complaint. • The trial court excluded all evidence (including medical records) that the plaintiff signed an informed consent form for the procedure. • A jury found for the plaintiff and the defense appealed to the Court of Special Appeals. • **The Court of Special Appeals held that the trial court did not abuse its discretion by excluding evidence that the physician had advised the patient of the risks and complications of colonoscopy. The evidence had been offered in support of defenses of assumption of the risk and of standard of care. The Court stated that "except in cases involving a refusal or delay in undergoing recommended treatment or the pursuit of unconventional treatment, a health care provider cannot invoke the affirmative defense of**	• This case involved a perforation which occurred during a routine screening colonoscopy. Perforation is a recognized complication and was listed as a risk on the informed consent form the patient signed. The defense was prevented from presenting any evidence on informed consent including the signed consent form which was part of the medical records. • This case was tried in the Circuit Court for Baltimore City. The jury awarded $673,791.	

		assumption of the risk where a breach of informed consent has not been alleged." **Case is concluded.**		
University of Maryland Medical System Corporation (University of MD Medical System Corp et. al v. Brandon Kerrigan)	Is the transfer of venue from Baltimore City to Talbot County, where the plaintiffs, the principal treating physician defendants, and the majority of witnesses are located, appropriate?	• 2015- Baltimore City Circuit Court granted motion to transfer venue to Talbot County Circuit Court. Plaintiffs appealed. • 2016- Maryland Court of Special Appeals reversed the order to transfer venue and remanded to Baltimore City Circuit Court. • 2017- Pending in the Maryland Court of Appeals.	• Plaintiffs live in Talbot County. Patient was referred by the primary care physician to a radiology practice in Easton. The Radiologist diagnosed, and the primary care physician treated patient. Patient's symptoms worsened and was treated at Shore Regional. The Shore Regional physician communicated with an attending at UMMC. Patient was admitted to UMMC and required a heart transplant. He continues to receive care from UMMC. • Patient's parents brought a malpractice suit against the Radiologist in Easton, the physician at Shore Regional, and the two treating physicians at UMMC. Plaintiffs claim that Baltimore City is the appropriate venue because UMMC has its principal place of business in	

			Baltimore City and the two last physicians to treat the patient were employees of UMMC.	
Copsey (Copsey v. Park)	Did the Circuit Court err in admitting evidence of the negligence of subsequent treating physicians and instructing the jury on superseding causation? Is it reversible error for the Trial Court to admit evidence of the negligence of non-party, subsequent treating physicians, including evidence that they were once defendants in the instant suit? Is it reversible error for the Trial Court to instruct the jury on superseding cause when the negligence of all the treating physicians amounted to one indivisible injury, that being death?	• The trial court found that the physician did not breach the standard of care and acted as a reasonable physician under the circumstances. The Court of Special Appeals affirmed the Circuit Court. • The court held that a reasonable jury could have found that the negligence of the subsequent treating physicians were both intervening and superseding causes contributing to the patient's death. • The Court of Appeals agreed with the lower courts that it is not error to admit evidence of the negligence of the non-party subsequent treating physicians, as it was relevant and necessary in providing a fair trial to the physician in the lawsuit. • Causation was an issue for the jury to determine. **Case is concluded**	• Plaintiff contended that a radiologist interpreted a brain MRI/MRA as normal even though the images showed occlusions in the decedent's vertebral arteries that were indicative of a stroke. • Three other doctors were alleged to have made mistakes further down the line, compounding the problem • Before trial, plaintiff reached a settlement with two of the doctors who allegedly contributed to the delay in diagnosis and treatment of the decedent, signing joint tortfeasor releases with all of the defendants. • The third doctor was dismissed just before the trial. The case proceeded against the radiologist in Anne Arundel County Circuit Court.	
Davis (Davis v. Frostburg)	Can a patient who suffered from a medical injury sidestep the requirement to file a claim along with a certificate of a qualified expert and report with the Alternative Dispute Resolution Office before filing	• Trial Judge granted a Motion to Dismiss. Court of Special Appeals affirmed that decision. • September, 2017 - Court of Appeals found for the health care entity and determined that patient with medical injuries must fulfill the requirement to	• The patient was admitted to the entity for recovery and physical rehabilitation services. The patient said she fell from her bed. • After her roommate called for the assistance of a nurse, a nurse responded and informed the patient that the entity was a "no lift	1. "Close cases" can but do not have to be submitted to the ADR office and a trial judge can decide whether a complaint alleges a breach of professional standard of care and whether it must be filed in the ADR

	a lawsuit?	file in the ADR office before filing a lawsuit. **Case is concluded**	facility." • The nurse then retrieved a mechanical lift. • Patient alleges that in the course of raising the patient from the floor using the specialized medical equipment, the nurse dropped the patient from above the height of the bed, causing her to fall back to the floor and suffer significant injuries. • The patient claimed that because the injury was caused by "ordinary negligence," she was not required to file a claim with the ADR Office beforehand.	office. 2. The patient's initial fall was not a "medical injury." 3. A fall from a lift can only be described as part of a medical procedure. 4. A health care provider is liable for a nurse's negligence through respondeat superior and therefore such a claim must be filed with the ADR Office.
Bell & Bon Secours Hospital (Bell & Bon Secours Hospital Baltimore v. Chance)	Whether a physician's good faith decision that a patient no longer meets the criteria of involuntary admission is immune from civil liability and whether it can be the basis of a jury verdict for medical malpractice.	• Litigation ensued in the Circuit Court for Baltimore City. The Plaintiff argued Dr. Bell – and Bon Secours vicariously as his employer – was negligent in releasing her son. • After a jury returned a verdict in Ms. Chance's favor, the Circuit Court vacated that judgment based in part on its understanding of the immunity statute. • A divided Court of Special Appeals reversed the Circuit Court decision. • Maryland Highest Court, The Court of Appeals, agreed with that ruling stating that "during that process, if a physician applies the statutory criteria for involuntary admission and concludes in good faith that the	• The estate of a man who committed suicide shortly after being discharged from a psychiatric hospital brought a negligence action the hospital and the decedent's treating physician. • The estate argued that the hospital and physician breached the standard of care for discharging an involuntarily admitted patient with a history of attempted suicides. A jury agreed and awarded the estate more than $2.3 million in damages. • The trial court, however, entered judgment notwithstanding the verdict in favor of the physician and hospital, finding the estate failed to produce sufficient evidence that the physician breached the applicable standard of care.	

		individual no longer meets those criteria, the facility must release the individual. That decision is immune from civil liability and cannot be the basis of a jury verdict for medical malpractice." • The Court went on to rule *"If a psychiatrist employed by a facility applies the statutory criteria for involuntary admission in good faith and decides to release an individual prior to the ALJ hearing, the psychiatrist and the facility are immune from civil and criminal liability for that decision pursuant to HG §10-618 and CJ §5-623. Accordingly, a jury verdict of negligence may not be based upon an expert opinion that identifies such a decision as a breach of the standard of care."* **Case is concluded**	• The Court of Special Appeals reversed this decision, concluding that the estate's expert presented sufficient evidence of malpractice via a premature hospital discharge given the decedent's symptoms.	
Davis (Davis v. Armacost)	What standard of care should be applied in a medical malpractice case, the standard of a reasonable person or the standard of a reasonable *physician*?	• Trial Court found for the patient and the jury used a "reasonable person standard." • The Court of Special Appeals held that this standard was inappropriate. **The case is ongoing and is in front of the Court of Appeals now**	• Patient filed a medical malpractice complaint against neurosurgeon. • The Circuit Court, Baltimore County, No. 03–C–14–011973 MM, Susan Souder, J., entered judgment on jury verdict in favor of patient on the malpractice issue and in favor of neurosurgeon on the informed consent issue. • Neurosurgeon appealed.	
