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 vs. 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. **Case is Concluded**	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?
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)	**<u>Holding:</u>** **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. **Case is concluded**	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." The Court then stated that the amount of time annually devoted to activities that "directly involve testimony" is divided by the amount of time 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% 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.**	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?
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. • 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**	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?

		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 that there were 3 separate shares for the hospital employees, and he should be only 1/5 responsible. • **Case is concluded**.	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?
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 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.**	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.
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 assumption of the risk where a breach of informed consent has not bee n alleged."** **Case is concluded.**	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.