IN THE SUPREME COURT OF OHIO

VIL LASER SYSTEMS, LLC,	:	
	:	Case No. 2007-0996
Plaintiff-Appellee,	:	On Appeal from the Court of Appeals of the Third Appellate Judicial District, Shelby County Case No. 17-07-02
v.	:	
SHILOH INDUSTRIES, INC.,	:	
Defendant-Appellant.	:	

MERITS BRIEF OF APPELLANT SHILOH INDUSTRIES, INC.

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FILED
NOV 30 2007
CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

It is a universally recognized principle that when a court gives a party a choice between a new trial or accepting remittitur of a damage award, the order is not final. Rather, the order becomes final either when the party makes its choice (or the window of time to make that choice closes), or when the court issues a final judgment after the election is made.

The Third District Court of Appeals, the first Ohio court to consider this issue, decided to the contrary. It held that the order of the trial judge giving the plaintiff the choice between a new trial or remittitur was the final judgment from which the 30-day time to file an appeal began to run. As a result, the Court of Appeals held that Shiloh Industries' notice of appeal—which was filed within 30 days of the plaintiff's consent to remittitur but not within 30 days of the trial court's order—was untimely. This decision prevented Shiloh and the plaintiff (whose cross-appeal was also dismissed as untimely) from litigating the merits of their appeals, contravened the law of final appealable orders, undermined judicial economy and finality, and unjustifiably set Ohio apart from other jurisdictions, both state and federal. This Court should reverse.

STATEMENT OF THE FACTS

Appellee VIL Laser Systems, LLC ("VIL") filed a breach of contract action against Appellant Shiloh Industries, Inc. ("Shiloh") in the Shelby County Court of Common Pleas, claiming that VIL and Shiloh had entered into a contract requiring Shiloh to purchase laser welding systems from VIL. (Supplement at S-5.) Shiloh contended that the parties had no such contract. The parties filed cross-motions for summary judgment. (Id. at S-12, S-13.) The trial court granted

summary judgment to VIL on liability, and set a trial on damages. (Id. at S-16.) The jury awarded VIL $2.29 million plus interest. (Appendix at A-9.)

On September 18, 2006, the trial court entered judgment on the jury verdict. (Id.) Shiloh filed a motion for judgment notwithstanding the verdict, new trial, or remittitur on the grounds that the damage award was unsupported by the evidence. (Supplement at S-24.) On December 15, 2006, the trial court held that the jury award, while not influenced by passion or prejudice, was indeed excessive and contrary to law. (Appendix at A-10-A-11.) The trial court vacated the earlier judgment and ordered a new trial on damages unless VIL accepted a remittitur of $2,016,416.22 within 14 days. The order reads as follows:

> Judgment shall be entered against Shiloh Industries, Inc. for Total Contract Damages in the amount of $1,580,568.52 upon the consent of the Plaintiff. The Court grants the Plaintiff a new trial on damages, unless the Plaintiff files a notice of consent to the Contract Damages Amount of $1,580,568.52 within fourteen (14) days of the filing of this order. Pre-judgment interest in the amount of $435,847.70 shall be added to the said Contract Damages Amount and included in the final judgment against Defendant Shiloh Industries, Inc. Judgment is granted to Plaintiffs in the total amount of $2,016,416.22 in the manner set forth above.

(Id. at A-12.)

The order stated that "All counsel and parties are notified that this order is an appealable order under 2505.02(B)(3)[,]" the section of R.C. 2505.02 deeming new trial orders to be final. (Id.) On December 29, 2006, VIL accepted the remittitur. (Id. at A-13.)

On January 16, 2007, the trial court issued an amended order, as its original order had miscalculated the amount of prejudgment interest. (Id. at A-15.) The similarly worded order gave VIL the right to accept a remittitur of

$1,881,396.16 or face a new trial on damages. (Id. at A-17.) The trial court gave VIL a new 14-day window of time to decide. On January 30, 2007, VIL accepted the new remittitur. (Id. at A-19.) The trial court never entered a judgment reflecting VIL's acceptance of either remittitur.

Shiloh filed a notice of appeal to the Third District on January 25, 2007. VIL filed a notice of cross-appeal on February 2. (Id. at S-1.) On April 18, 2007, the Third District dismissed both appeals. (Appendix at A-4-A-8.) The Court of Appeals acknowledged that Shiloh's appeal was timely if the 30-day time period to appeal did not begin to run until after the plaintiff consented to the remittitur. Nevertheless, the court held that the time for appeal started running on December 15, the day the trial court issued its initial order giving VIL the choice of a new trial or remittitur, and that the January 25 notice of appeal was therefore untimely. "Notwithstanding federal interpretation to the contrary," held the Third District, "we are not persuaded that it took Appellee's 'consent' to accept remittitur to effectuate the trial court's intent or judgment." (Id. at A-7.)

On June 1, 2007, Shiloh filed a notice of appeal to this Court. (Id. at A-1-A-3.) On October 3, 2007, this Court accepted this appeal on the following proposition of law:

> It is a universal proposition of law that when a court allows a plaintiff to choose between two rulings – such as remittitur vs. a new trial on damages – the order is not final until the plaintiff makes his election, or the window of time to choose closes. The Third District was "not persuaded" by this rule and dismissed the appeal as untimely. Ohio should not be the only jurisdiction in the country that rejects this principle of law.

On October 24, 2007, this Court filed the record of the Court of Appeals, making Shiloh's merits brief due on or before December 3, 2007.[1]

ARGUMENT

<u>Proposition Of Law</u>: An order giving a plaintiff the choice between remittitur or a new trial on damages is not a final appealable order from which the time to file a notice of appeal begins to run.

A. An order allowing a plaintiff to choose either a new trial or remittitur is not a final order under R.C. 2505.02.

The trial court gave plaintiff VIL Laser Systems a 14-day window of time to choose between accepting remittitur or receiving a new trial on damages. On the last day of the 14-day window, the plaintiff accepted the remittitur. Shiloh filed its notice of appeal more than 30 days after the trial court's order, but less than 30 days after the plaintiff filed its consent to remittitur (and the trial court never journalized VIL's consent to remittitur or entered a final judgment reflecting its consent to remittitur). The Third District held that the trial court's order was the final judgment, that the appellate clock began ticking upon its entry, and that the appeal was untimely as a result.[2] The Third District erred in so holding.

Section 3(B)(2), Article IV of the Ohio Constitution states that appellate courts have jurisdiction only over final orders or judgments.[3] To be a final appealable order, the order must satisfy the requirements of R.C. 2505.02.[4] Under R.C. 2505.02(B)(1), an order must "affect[] a substantial right in an action that in effect determines the action and prevents a judgment" to be final. An

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[1] See S.Ct.Prac.R. VI(2)(A).
[2] Appendix at A-6.
[3] See *Sinnott v. Aqua-Chem, Inc.*, --- Ohio. St.3d ---, 2007-Ohio-5584, --- N.E.2d ---, at ¶ 9; *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, at ¶ 26; Appendix at A-22.
[4] *Adams* at ¶ 27; Appendix at A-23.

order that "leaves issues unresolved" is not a final appealable order unless the remaining issue is "mechanical" and involves an "ministerial task" unlikely to produce a second appeal.[5]

The trial court's order did not "determine the action" because it gave VIL the choice of a new trial on damages or, in the alternative, remittitur. Until VIL elected a judgment, the action had not been determined. And the issue left unresolved was hardly ministerial. Left unresolved was the fundamental nature of the relief imposed, and the likelihood of an appeal could well have hinged upon VIL's choice.

Moreover, until VIL made its election, the order cannot be said to have affected a "substantial right" because the relevant substantial right "that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect" had not yet been determined.[6] Accordingly, the trial court's order was not a final appealable order under the Ohio Constitution and R.C. 2505.02.

The order was also not final and appealable for the simple reason that one of the two potential judgments was remittitur. The trial court did state that its December 15 order was appealable, citing to R.C. 2505.02(B)(3).[7] But calling it appealable did not make it so.[8] R.C. 2505.02(B)(3) deems only one of the two remedies here to be final—the grant of a new trial. While simply granting a new

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[5] *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, at ¶ 20.
[6] See R.C. 2505.02(A)(1).
[7] See Appendix A-12.
[8] See *St. Vincent Charity Hosp. v. Mintz* (1987), 33 Ohio St. 121, 123, 515 N.E.2d 917 ("[T]he label or title placed on a document is not by itself determinative that the document is, in fact, a judgment entry.").

trial would have been a final appealable order, this Court has long held that a trial court cannot order remittitur without the plaintiff's consent.[9] As this Court held in *Wightman v. Consol. Rail Corp.*, a plaintiff must agree to a reduction in damages "*before* a court may grant remittitur."[10]

The trial court understood that fact. As a result, in its December 15 order, the trial court held that "*[j]udgment shall be entered* against Defendant Shiloh Industries, Inc. for Total Contract Damages in the amount of $1,580,568.52 *upon the consent of the Plaintiff.*"[11] Thus, by the express terms of the trial court's order, judgment could not have been entered, and the time for appeal could not begin to run, until VIL consented to remittitur—and Shiloh's appeal was timely. The Third District's holding that it was "not persuaded that it took Appellee's consent to accept remittitur to effectuate the trial court's intent or judgment"[12] conflicts directly with the plain language of the trial court's order as well this Court's remittitur jurisprudence.

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[9] *Wightman v. Consol. Rail Corp.* (1999), 86 Ohio St.3d 431, 444, 715 N.E.2d 546; *Chester Park Co. v. Schulte* (1929), 120 Ohio St. 273, 290, 166 N.E. 186.
[10] *Wightman*, 86 Ohio St.3d at 444 (emphasis added). See, also, *In re Murnan's Estate* (1949), 151 Ohio St. 529, 532, 87 N.E.2d 84 ("[I]n a case where the validity of a judgment in a review on questions of law involves the weight of the evidence, the Court of Appeals may reverse the judgment on the weight of the evidence, but under such circumstances must remand the cause, for a new trial. *It may not modify and enter final judgment unless there is a consent to a remittitur.*") (emphasis added).
[11] See Appendix at A-12 (emphasis added).
[12] Id. at A-7. While the trial court's "intent" in the December 15 order was clear—to give the plaintiff a choice between two alternatives—its "judgment" was not. The judgment was unknown until VIL made its choice.

B. No other jurisdiction, either federal or state, has deemed such an order to be final.

Federal and state courts across the country have uniformly held that an order such as the one issued in this case is not final—and, where applicable, the appeal clock does not start running—until either (a) the plaintiff elects a remedy (or the window of time to choose expires), or (b) the court issues a judgment reflecting the remedy chosen. This includes the United States Supreme Court,[13] the Second Circuit,[14] the Third Circuit,[15] the Fourth Circuit,[16] the Fifth Circuit,[17] the Sixth Circuit,[18] the Ninth Circuit,[19] the Tenth Circuit,[20] the Eleventh Circuit,[21]

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[13] See *City of Paducah v. East Tennessee Tel. Co.* (1913), 229 U.S. 476, 480, 33 S.Ct. 816, 57 L.Ed. 1286; *Barker v. Craig* (1888), 127 U.S. 213, 215-16, 8 S.Ct. 1175, 32 L.Ed. 147.

[14] See *Ortiz-Del Valle v. N.B.A.* (C.A.2, 1999), 190 F.3d 598, 600 ("Where the plaintiff elects the remittitur, the defendant's time for filing the notice of appeal runs from the date of entry of the amended judgment reduced as a result of the remittitur."); *Evans v. Calmar S.S. Co.* (C.A.2, 1976), 534 F.2d 519, 522.

[15] *Mauriello v. Univ. of Med. and Dentistry of New Jersey* (C.A.3, 1986), 781 F.2d 46, 49 ("The amount of the judgment was not fixed until plaintiff filed her consent, and at that point the time for appeal began to run. The notice of appeal was filed within 30 days of the plaintiff's acceptance, and therefore was timely.").

[16] *American Canoe Assn. v. Murphy Farms, Inc.* (C.A.4, 2003), 326 F.3d 505, 514-15; *Fayetteville Investors v. Commercial Builders, Inc.* (C.A.4, 1991), 936 F.2d 1462, 1469-70.

[17] *Howell v. Marmpegaso Compania Naviera, S.A.* (C.A.5, 1978), 566 F.2d 992, 993 ("[A]cceptance of the remittitur rendered the judgment final and appealable, and actuated the 30-day time limit within which notice of appeal must be filed").

[18] *Anderson v. Roberson* (C.A.6, 2001), 249 F.3d 539, 542 ("[A] district court order giving the plaintiff a choice between remittitur or a new trial is not a final, appealable order").

[19] *Gila River Ranch, Inc. v. United States* (C.A.9, 1966), 368 F.2d 354, 357 ("The time for appeal in a case involving the United States . . . commenced to run upon the entry of the order accepting the remittitur."). See, also, *Eaton v. Natl. Steel Prods. Co.* (C.A.9, 1980), 624 F.2d 863, 864.

[20] *McKinney v. Gannett Co., Inc.* (C.A.10, 1982), 694 F.2d 1240, 1248 ("By the terms of the 'Final Judgment' McKinney still has the option to rescind or not rescind. Thus, a final judgment has not been entered by the district court. An appellate opinion at this juncture would be advisory only.").

Alabama,[22] Arizona,[23] Arkansas,[24] Colorado,[25] Florida,[26] Louisiana,[27] Massachusetts,[28] Missouri,[29] Pennsylvania,[30] and the Northern Mariana Islands.[31]

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[21] *Wright v. Preferred Research, Inc.* (C.A.11, 1990), 891 F.2d 886, 888 ("The district court . . . denied the motion for new trial conditionally upon Wright's acceptance of a remittitur. When Wright accepted the remittitur on December 28, 1988, the judgment became final and appealable, actuating the 30-day period within which a notice of appeal must be filed.").

[22] *Parsons v. Aaron* (Ala. 2002), 849 So.2d 932, 936 ("On July 5, 2001 the trial court unconditionally denied all posttrial motions except for the Parsonses' motion for a new trial, which the court denied conditioned upon Aaron's acceptance of a remittitur. Because that remittitur had not been accepted as of July 6, that aspect of the Parsonses' posttrial motions remained pending on July 6, 2001. Because the Parsonses' notices of appeal were filed on August 17, 2001, 42 days after July 6, the notices of appeal were timely filed.") (footnote omitted).

[23] *Harris v. Howard P. Foley Co.* (1965), 2 Ariz.App. 389, 391, 409 P.2d 309 (30-day period does not run until election made or window of time expires); *Arizona Land Corp. v. Sterling* (1967), 5 Ariz.App. 4, 7, 422 P.2d 734 (order granting either a new trial or remittitur becomes appealable when brought "to a conclusion" by acceptance of remittitur and a formal order signed by the trial judge).

[24] *Horton v. Eaton* (1975), 258 Ark. 987, 991, 530 S.W.2d 669 (time limitation for filing appeal commences when remittitur is accepted and order disposing of litigation issued).

[25] *Kimmey v. Peek* (Colo.App. 1983), 678 P.2d 1021, 1023 (period for filing notice of appeal commenced no earlier than the acceptance of remittitur, because "the ruling of the trial court was conditioned upon the conduct of the [parties] and the operative date of its order was thus indeterminate").

[26] *Stanberry v. Escambia Cty.* (Fla.App. 2002), 813 So.2d 278, 280 ("When an order granting remittitur or, in the alternative, a new trial is entered, subsequent rejection of remittitur can transform the order into an order granting a new trial, which may be appealed.").

[27] *VaSalle v. Wal-Mart Stores, Inc.* (La. 2001), 801 So.2d 331, 336 ("The reasoning of the *Anderson* [*v. Roberson*] court is sound and we agree with it.").

[28] *Okongwu v. Stephens* (1986), 396 Mass. 724, 729, 488 N.E.2d 765 ("It was not until the plaintiff accepted the remittitur on July 11, 1984, that the defendants' motion for a new trial effectively was denied. Therefore, it was on July 12, 1984, that the new appeal period began to run . . . and that is the date from which the timeliness of this appeal must be measured.").

[29] *Cotter v. Miller* (Mo.App. 2001), 54 S.W.3d 691, 695 ("The trial court's ruling that the Cotters had fifteen days to accept the remittitur means that the judgment became appealable at the conclusion of the fifteen day period. . . . Therefore, the

C. The time to appeal should not begin to run until the trial court enters a judgment consistent with the plaintiff's election—or, at a minimum, until the plaintiff chooses between the two potential judgments.

There are two ways the Court could view what constitutes a final appealable order from which the time to file a notice of appeal begins to run in a case such as this.

First, the Court could hold that no final appealable order exists until the trial court enters a final judgment under Civil Rule 58 after the plaintiff's election of a remedy, with the 30-day clock running from the journalization of that judgment.[32] Some other jurisdictions have adopted this approach.[33] This would be consistent with R.C. 2505.02(B)(1)'s requirement that a final order determine the action and leave no issues unresolved. It would also satisfy the Third District's concern that the plaintiff's filing of its consent to remittitur is not itself an "order" of the trial court. And it would be consistent with this Court's prior rulings which, given the requirement that a plaintiff consent before remittitur is

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judgment became appealable fifteen days later on April 1, 2000. Under Rule 81.04, the Cotters had ten days from April 1, 2000, to file the notice of appeal.").

[30] *Atene v. Lawrence* (1972), 220 Pa.Super. 444, 446, 289 A.2d 178 ("Until such election is made, an appealable final order cannot be entered. If the plaintiff decides to remit, a judgment may be entered on the verdict as remitted and a judgment appealable by the defendant exists. If the plaintiff refuses to remit, an order granting a new trial should be entered. Such an order is also appealable.").

[31] *Ishimatsu v. Royal Crown Ins. Corp.* (N.Mar.I. 2006), 2006 WL 1049667, *2.

[32] See Appendix at A-25.

[33] See, e.g., *Barker*, 127 U.S. at 215-16; *Anderson*, 249 F.3d at 542, 543 (Sixth Circuit holds that district court must enter final order based upon election of remittitur, or proceed to judgment after new trial); *Ortiz-Del Valle*, 190 F.3d at 599 (Second Circuit holds that court obligated to issue new judgment under Fed. R. Civ. P. 58 after election is made); *Arizona Land*, 5 Ariz.App. at 7 (order granting new trial or remittitur appealable only after election and formal order signed by trial judge).

ordered, have held that the trial court could enter (or that this Court would affirm) a judgment reflecting a remittitur only after the plaintiff consented to a reduction in damages.[34]

Second, the Court could hold that a conditional new trial order becomes final upon the filing of the plaintiff's election or when the window of time to choose closes, thereby actuating the 30-day time to appeal.[35] Some courts in other jurisdictions have adopted this approach as well.[36] Although there is some tension in this approach with Rule 58's requirement that a final judgment be journalized, this tension can be reconciled by requiring a trial court to journalize either the election of a remedy, or the expiration of the window of time to choose. The appeal clock would then begin to run from the date of journalization.

Using the first approach, the trial court has yet to issue a final judgment reflecting VIL's choice. Any notice of appeal, therefore, would be premature, awaiting this Court's order instructing the trial court to enter judgment reflecting

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[34] See, e.g., *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 653-54, 635 N.E.2d 331 ("Upon remand, appellant may elect to accept the remittitur, in which case the trial court shall enter judgment in appellant's favor. . . ."); *Silverglade v. Von Rohr* (1923), 107 Ohio St. 75, syllabus, 140 N.E. 669 ("A trial court upon finding the damages assessed by a jury to be excessive, not the result of passion or prejudice, may order a remittitur of the excess as a condition precedent to entering judgment upon the verdict, and *upon the remittitur being made may enter judgment* for the amount of the verdict, less the remittitur.") (emphasis added); *Chester Park Co.*, 120 Ohio St. at 282 ("If a remittitur in the above sum is entered by the plaintiff below the judgment will be affirmed, otherwise reversed, and a new trial ordered."). See, also, *Larrissey v. Norwalk Truck Lines* (1951), 155 Ohio St. 207, 219-20, 98 N.E.2d 419; *Bartlebaugh v. Pennsylvania R. Co.* (1948), 150 Ohio St. 387, 389, 82 N.E.2d 853; *Sibila v. Bahney* (1878), 34 Ohio St. 399, 410-11.

[35] See, e.g., *Howell*, 566 F.2d at 993 (acceptance of remittitur automatically starts 30-day time to appeal).

[36] See, e.g., *Mauriello*, 781 F.2d at 49; *Howell*, 566 F.2d at 993; *Wright*, 891 F.2d at 888; *Okongwu*, 396 Mass. at 728-29.

VIL's consent to remittitur. Using the latter approach, Shiloh had at least until January 29 to appeal.[37] It filed its notice of appeal on January 25, making the appeal timely.

D. The Third District's decision undermines judicial economy and the principles behind remittitur.

In *Wightman*, this Court emphasized the importance of remittitur as a tool to improve judicial economy:

> Remittitur plays an important role in judicial economy by encouraging an end to litigation rather than a new trial. The trial court sets forth persuasively the great value of a conclusion. There are times when an end has its own value, with justice delivered, and not further delayed. A final judgment brings closure, certainty, and possibly a commitment to changed future behavior. These are societal benefits as well as benefits to the parties. Wrongs are righted through judgments. Our justice system does not work without finality. Until then, the system's great value is in limbo. We take little from it, but we continually feed it with our energies, intellect, and emotions. The judge and both parties play a role in ending litigation. The law surrounding remittitur should reflect that.[38]

If the Third District's reasoning stands, however, judicial economy will suffer. Parties presented with an order like the one in this case may be forced to appeal before the plaintiff's election deadline if the 30-day time to appeal is fast approaching, or if the plaintiff's window of time to elect a remedy exceeds 30 days. Then, depending upon the plaintiff's decision, the parties will have to

---

[37] Seeking to correct the trial court's miscalculation of the interest component of the remittitur in its December 15 order, Shiloh sought a nunc pro tunc order with a corrected total figure. The trial court issued an amended order on January 16, giving VIL a new 14-day period to accept or reject the newly calculated remittitur amount. VIL accepted the new remittitur on January 30, 2007. Accordingly, the 30-day window of time to appeal in actuality should not have run until March 1, more than a month after the notice of appeal was filed.

[38] *Wightman*, 86 Ohio St.3d at 443.

decide whether to withdraw their appeals or modify them. This is a poor system for conserving judicial resources.

The rule espoused by the Third District would also undermine judicial economy if filing an appeal were held to divest the trial court of jurisdiction to allow acceptance of the remittitur. If a defendant filed an immediate notice of appeal and thereby precluded acceptance of the remittitur, and the plaintiff subsequently won on appeal and upon remand accepted remittitur, another appeal might ensue. This Court frowns upon interpreting R.C. 2505.02 in a manner that engenders piecemeal appeals.[39]

Finally, a plaintiff has no right to appeal its acceptance of a remittitur unless the defendant appeals first.[40] If the court of appeals' decision stands, this principle could be undermined as well. A plaintiff given more than 30 days to elect a remedy would be able to force a defendant to file a notice of appeal before having to decide whether to accept or reject remittitur—essentially giving the plaintiff the unfettered right to appeal its acceptance of a remittitur, in contravention of this Court's holding in *Wightman*.

---

[39] See, e.g., *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, 866 N.E.2d 1059, at ¶ 8 (allowing appeal before calculation of prejudgment interest would not serve judicial economy because it could result in second appeal).

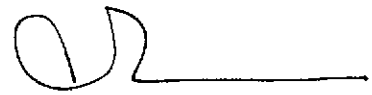
[40] *Wightman*, 86 Ohio St.3d at 444.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below.

Date: November 30, 2007

Respectfully submitted,



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COUNSEL FOR APPELLANT
SHILOH INDUSTRIES, INC.

PROOF OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail to the following counsel on this 30th day of November, 2007:

James L. Thieman
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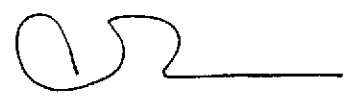
Facsimile: (937) 489-1306

Counsel For Appellee
VIL Laser Systems, LLC



COUNSEL FOR APPELLANT
SHILOH INDUSTRIES, INC.

EXHIBIT A

COPY

IN THE SUPREME COURT OF OHIO

07-0996

VIL LASER SYSTEMS, LLC,	:	
Plaintiff-Appellee,	:	On Appeal From the Shelby County Court of Appeals, Third Appellate District, Case No. 17-07-02
v.	:	
SHILOH INDUSTRIES, INC.,	:	
Defendant-Appellant.	:	

NOTICE OF APPEAL

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Counsel for Appellee
VIL Laser Systems, LLC

FILED
JUN 01 2007
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

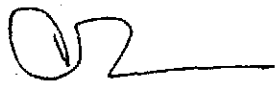
Appellant Shiloh Industries, Inc. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Shelby County Court of

Appeals, Third Appellate District, entered in Court of Appeals case No. 17-07-02 on April 18, 2007.

This case is one of public or great general interest.

Date: June 1, 2007

Respectfully submitted,



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COUNSEL FOR APPELLANT
SHILOH INDUSTRIES, INC.

PROOF OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail to the following counsel on this 1st day of June, 2007:

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Counsel for Appellee
VIL Laser Systems, LLC

COUNSEL FOR APPELLANT
SHILOH INDUSTRIES, INC.

EXHIBIT B

FILED
COURT OF APPEALS
APR 1 8 2007
SHELBY COUNTY, OHIO

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

SHELBY COUNTY

VIL LASER SYSTEMS, LLC,

PLAINTIFF-APPELLEE,
CROSS-APPELLANT,

CASE NO. 17-07-02

v.

SHILOH INDUSTRIES, INC.,

DEFENDANT-APPELLANT,
CROSS-APPELLEE,
-and-

JOURNAL
ENTRY

SHILOH CORPORATION, ET AL.,

DEFENDANTS-APPELLEES.

This cause comes before the court upon Appellee's motion to dismiss the appeal, alleging that the notice of appeal was not timely filed within thirty days of the final judgment, and upon Appellant's brief in opposition to the motion to dismiss.

Although numerous, the relevant filing dates of the trial court judgments are not at issue. On September 18, 2006, the trial court entered judgment on the jury's verdict against Appellant in the amount of $2,290,000.00, with interest to accrue, plus prejudgment interest at the statutory rate. Appellant filed a timely motion for judgment not withstanding the verdict and/or new trial and/or

remittitur, and the trial court issued an order setting deadlines for responses to the post-trial motion and for briefs on the amount of prejudgment interest. On December 13, 2006, judgment was entered specifically determining the amount of prejudgment interest due, and granting judgment in the amount of $2,725,847.70.

On December 15, 2006, the trial court entered judgment denying the motion for judgment not withstanding the verdict, but granting the motion for new trial, on damages only, via remittitur, based upon entitled credits on the contract. The order set aside the verdict and entered judgment in the amount of $2,016,416.22, including specific calculation for prejudgment interest, upon consent of the Plaintiff [Appellee]. The order granted Plaintiff [Appellee] a new trial on damages, unless it filed a notice of consent to the reduced amount of damages within fourteen days. On December 29, 2006, Plaintiff [Appellee] filed one sentence pleading captioned "Plaintiff's Notice to Consent to Remittitur."

Thereafter, on January 10, 2007, Appellant filed a motion for order *nunc pro tunc* "purely to clarify a mathematical error" in the calculation of prejudgment interest. On January 16, 2007, the trial court entered an amended judgment granting new trial and remittitur under the same terms, but in the amount of $1,881,396.16, based upon a prior error in calculation of prejudgment interest.

Appellant filed a notice of appeal on January 25, 2007, referencing intent to appeal a number of early, interlocutory orders and the September 18, 2006 order, "which became a final judgment on January 16, 2007." Appellee then filed

its' notice of cross-appeal on February 2, 2007, referencing intent to appeal a number of early, interlocutory orders and all the judgments referenced above.

Consequently, we are required to determine whether the thirty-day time for appeal commenced upon filing of the final judgment granting new trial and remittitur, in which case the appeal and cross appeal are untimely and must be dismissed for want of jurisdiction; the filing of Appellee's notice of consent to remittitur, in which case the appeal is timely; or filing of the amended final judgment to correct mathematical error, in which case the appeal is also timely.

Upon consideration of same, we find that the thirty-day time for appeal commenced upon filing of the December 15, 2006 final judgment granting new trial and remittitur and, therefore, the January 25, 2007 notice of appeal and the February 2, 2007 notice of cross-appeal are not timely filed.

The "amended final judgment" resulted from Appellant's specific request that the final judgment be corrected *nunc pro tunc* to correct a calculation error, the docket reflects no opposition filed by Appellee, and the trial court agreed to the calculation error as "pointed out" by Appellant. Although incorrectly titled as an amended judgment, it was in effect a judgment entered *nunc pro tunc* to correct a "blunder in execution," as opposed to a change of mind. Civ.R. 60(A); *Kuehn v. Kuehn* (1988), 55 Ohio App.3d 245; and *Bobb Forest Products, Inc. v. Morbark Industries, Inc.* (2002) 151 OhioApp.3d 63. Because it is retroactive in effect, an

appeal will not lie from a nunc pro tunc judgment. *In re Parmelee* (1938), 134 Ohio St. 420.

Regarding the notice to consent to remittitur, the pleading filed by Appellee was not an "order" of the trial court and could not be designated as the subject of review as a "final order." See R.C. 2505.02; and App.R. 3. Furthermore, although no Ohio precedent exists directly on point, we conclude that the proper and only judgment subject to appeal in this case was the trial court's December 15, 2006 judgment granting a new trial on damages or, in the alternative, remittitur. An order that vacates or sets aside a judgment or grants a new trial is a "final order" subject to appeal. R.C. 2505.02(B)(3).

The initial judgment entered on the jury's verdict of liability was unaffected and the verdict on damages was set aside. Notwithstanding federal interpretation to the contrary, we are not persuaded that it took Appellee's "consent" to accept remittitur to effectuate the trial court's intent or judgment.

Furthermore, we note that a notice of appeal must designate the judgments appealed. App.R. 3(D). In the instant case, appellant's notice of appeal references, in pertinent part, the September 18, 2006 judgment (the original judgment on jury verdict) and indicates it "became a final judgment on January 16, 2007" (the amended judgment granting appellants' own request for nunc pro tunc correction of the judgment granting new trial.) The notice of appeal makes no reference to the original December 15, 2006 final judgment granting new trial on

damages or, in the alternative, remittitur, and gives no indication there even was a notice of consent to remittitur, or the need for a second notice of consent after the amended judgment.

Accordingly, as neither the notice of appeal nor the notice of cross-appeal was timely filed, the court lacks jurisdiction to entertain the appeals and the motion to dismiss is well-taken.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the appeal and cross-appeal be, and hereby are, **DISMISSED** at the costs of the Appellant and Cross-Appellant for which judgment is hereby rendered. It is further **ORDERED** that this cause be, and hereby is, remanded to the trial court for execution of the judgment for costs.

JUDGES

DATED: April 11, 2007

/jlr

Court
Thieman
Weingand

Copies 1.50
4/18/07 gi

EXHIBIT C

STATE OF OHIO SHELBY COUNTY ss
I, Michele K. Mumford, Clerk of the Common Pleas Court do hereby certify that the foregoing to be a full, true and correct copy of the original as the same appears on file in my office.
MICHELE K. MUMFORD CLERK
By Deputy

FILED
COMMON PLEAS COURT
06 SEP 18 PM 1:42
MICHELE K. MUMFORD
SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

VIL LASER SYSTEMS, LLC.	*	CASE NO. 04CV000158
Plaintiff,	*	JUDGE WELBAUM (By assignment)
-vs-	*	
SHILOH INDUSTRIES, INC., et al.	*	JUDGMENT UPON VERDICT
Defendants.	*	

* * * * * * * * * * * *

This matter came on for trial before a jury commencing August 29, 2006 through September 7, 2006. Upon the verdict rendered on September 7, 2006, the Court grants judgment in favor of Plaintiff VIL Laser Systems, LLC, and against Defendant Shiloh Industries, Inc. in the amount of $2,290,000.

Interest shall accrue on the amount of this judgment, plus any prejudgment interest, at the statutory rate. The costs of this action shall be paid by Defendant Shiloh Industries, Inc.

SO ORDERED.

Judge Welbaum

Pursuant to Civil Rule 58 (B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgement and the date of entry upon the journal.

TO THE CLERK:
Please serve all counsel of record.

G:\VIL Tech\Pldgs\Judgment on VerdictL.doc

EXHIBIT D

FILED
COMMON PLEAS COURT
06 DEC 15 PM 2:06
SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

VIL LASER SYSTEMS, LLC	:	CASE NO. 04CV000158
Plaintiff	:	Judge Welbaum (By Assignment 04JA0521)
vs.	:	
SHILOH INDUSTRIES, INC., et al.	:	
Defendants	:	

ORDER SETTING ASIDE JUDGMENT BY GRANTING DEFENDANT'S MOTION FOR REMITTITUR CONDITIONED ON PLAINTIFF'S ACCEPTANCE; ALTERNATIVELY, PLAINTIFF IS GRANTED THE OPTION FOR A NEW TRIAL ON DAMAGES

::

On September 21, 2006, the Defendant Shiloh Industries, Inc., filed a motion for judgment notwithstanding the verdict, a new trial, or in the alternative, remittitur. On October 13, 2006, the Plaintiff filed a memorandum contra. On October 25, 2006, the said Defendant filed a reply memorandum.

The Court overrules the motion for judgment notwithstanding the verdict. The Court finds that there is no evidence that the verdict was given under the influence of

passion or prejudice, irregularity or error, or any other ground alleged by the Defendant and set forth in Rules 50(B) or 59(A) except to warrant remittitur to the extent set forth herein.

When damages are excessive but not the result of passion or prejudice, a court has inherent authority to remit an award to an amount supported by the weight of the evidence. *Wightman v. Consolidated Rail Corp.* (1999), 86 Ohio St. 3d 431, *McLeod v. Mt. Sanai Medical Center*, 2006-Ohio-2206.

The Court finds that the verdict in the amount of $2,290,000.00 is clearly excessive and in error based on the evidence and law. The damage amount awarded by the jury is beyond the realm of proper compensation. The Court finds that the case is a proper one for granting a new trial on damages only, via remittitur, as to the credits on the contract which the Defendant was clearly entitled.

The Court hereby sets aside the judgment amount. The Total Contract Damages shall be $1,580,568.52, computed as follows:

Contract Price:	$10,125,000
Less Credits:	$4,051,730
Adjusted Price:	$6,073,270
Damages for Basic:	$6,073,270 X .205 X .30 = $373,506.11
Damages for Cubed:	$6,073,270 X .795 X .25 = $1,207,062.41

Total Contract Damages: $1,580,568.52

Remittitur: $709,431.48 ($2,290,000 judgment minus $1,580,568.52 total damages)

Judgment shall be entered against Defendant Shiloh Industries, Inc. for Total Contract Damages in the amount of $1,580,568.52 upon the consent of the Plaintiff. The Court grants the Plaintiff a new trial on damages, unless the Plaintiff files a notice of consent to the Contract Damages Amount of $1,580,568.52 within fourteen (14) days of the filing of this order. Pre-judgment interest in the amount of $435,847.70 shall be added to the said Contract Damages Amount and included in the final judgment against Defendant Shiloh Industries, Inc. Judgment is granted to Plaintiffs in the total amount of $2,016,416.22 in the manner set forth above.

IT IS SO ORDERED.

JEFFREY M. WELBAUM, JUDGE

NOTICE

ALL COUNSEL AND PARTIES ARE NOTIFIED THAT THIS ORDER IS AN APPEALABLE ORDER UNDER 2505.02(B)(3).

PRAECIPE

THE CLERK OF COURT IS ORDERED TO CAUSE A COPY OF THIS ORDER TO BE SERVED UPON ALL COUNSEL AND PARTIES OF RECORD.

IT IS SO ORDERED.

JEFFREY M. WELBAUM, JUDGE

EXHIBIT E

FILED
COMMON PLEAS COURT
06 DEC 29 AM 8:38
MICHELE K. MUMFORD
SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

VIL LASER SYSTEMS, LLC.	*	CASE NO. 04CV000158
Plaintiff,	*	JUDGE WELBAUM (By assignment)
-vs-	*	
SHILOH INDUSTRIES, INC., et al.	*	PLAINTIFF'S NOTICE TO CONSENT TO REMITTITUR
Defendants.	*	

* * * * * * * * * * *

Plaintiff elects to accept remittitur of the judgment as ordered by the trial court in its entry of December 15, 2006, thereby accepting the final judgment in the amount of $2,016,416.22.

James L. Thieman (0023595)
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Attorney for Plaintiff

FAULKNER,
HAUSEN, KEISTER
& SHENK
AL PROFESSIONAL
ASSOCIATION
RTVIEW CENTER
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MAIN AVENUE
NEY, OHIO 45365
(937) 492-1271

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been sent by ordinary United States mail, postage prepaid, to Lesley Weigand, Wegman, Hessler & Vanderburg, 6055 Rockside Woods Blvd., #200; Cleveland, Ohio 44131, this 29th day of December, 2006.

James L. Thieman

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JLT- th

FAULKNER,
IHAUSEN, KEISTER
& SHENK
SAL PROFESSIONAL
ASSOCIATION
JRTVIEW CENTER
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TH MAIN AVENUE
.Y, OHIO 45365
(937) 492-1271

EXHIBIT F

FILED
COMMON PLEAS COURT
07 JAN 16 PM 2:19
SHELBY COUNTY OHIO
SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

VIL LASER SYSTEMS, LLC	:	CASE NO. 04CV000158
Plaintiff	:	Judge Welbaum (By Assignment 04JA0521)
vs.	:	
SHILOH INDUSTRIES, INC., et al.	:	
Defendants	:	

AMENDED

ORDER SETTING ASIDE JUDGMENT BY GRANTING DEFENDANT'S MOTION FOR REMITTITUR CONDITIONED ON PLAINTIFF'S ACCEPTANCE; ALTERNATIVELY, PLAINTIFF IS GRANTED THE OPTION FOR A NEW TRIAL ON DAMAGES

::

On January 10, 2007 the Defendant, Shiloh industries pointed out an error in the Court's prior order granting remittitur as to the amount of interest due and owning on the reduced amount. This order is filed to correct that error.

On September 21, 2006, the Defendant Shiloh Industries, Inc., filed a motion for judgment notwithstanding the verdict,

a new trial, or in the alternative, remittitur. On October 13, 2006, the Plaintiff filed a memorandum contra. On October 25, 2006, the said Defendant filed a reply memorandum.

The Court overrules the motion for judgment notwithstanding the verdict. The Court finds that there is no evidence that the verdict was given under the influence of passion or prejudice, irregularity or error, or any other ground alleged by the Defendant and set forth in Rules 50(B) or 59(A) except to warrant remittitur to the extent set forth herein.

When damages are excessive but not the result of passion or prejudice, a court has inherent authority to remit an award to an amount supported by the weight of the evidence. *Wightman v. Consolidated Rail Corp.* (1999), 86 Ohio St. 3d 431, *McLeod v. Mt. Sanai Medical Center*, 2006-Ohio-2206.

The Court finds that the verdict in the amount of $2,290,000.00 is clearly excessive and in error based on the evidence and law. The damage amount awarded by the jury is beyond the realm of proper compensation. The Court finds that the case is a proper one for granting a new trial on damages only, via remittitur, as to the credits on the contract which the Defendant was clearly entitled.

The Court hereby sets aside the judgment amount. The Total

Contract Damages shall be $1,580,568.52, computed as follows:

Contract Price:	$10,125,000
Less Credits:	$4,051,730
Adjusted Price:	$6,073,270
Damages for Basic:	$6,073,270 X .205 X .30 = $373,506.11
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Total Contract Damages:	$1,580,568.52
Remittitur:	$709,431.48 ($2,290,000 judgment minus $1,580,568.52 total damages)

Judgment shall be entered against Defendant Shiloh Industries, Inc. for Total Contract Damages in the amount of $1,580,568.52 upon the consent of the Plaintiff. The Court grants the Plaintiff a new trial on damages, unless the Plaintiff files a notice of consent to the Contract Damages Amount of $1,580,568.52 within fourteen (14) days of the filing of this order. Pre-judgment interest in the amount of $300,827.64 shall be added to the said Contract Damages Amount and included in the final judgment against Defendant Shiloh Industries, Inc. Judgment is granted to Plaintiffs in the total amount of $1,881,396.16 in the manner set forth above.

IT IS SO ORDERED.

JEFFREY M. WELBAUM, JUDGE

NOTICE

ALL COUNSEL AND PARTIES ARE NOTIFIED THAT THIS ORDER IS AN APPEALABLE ORDER UNDER 2505.02(B)(3).

PRAECIPE

THE CLERK OF COURT IS ORDERED TO CAUSE A COPY OF THIS ORDER TO BE SERVED UPON ALL COUNSEL AND PARTIES OF RECORD.

IT IS SO ORDERED.

JEFFREY M. WELBAUM, JUDGE

EXHIBIT G

FILED
COMMON PLEAS COURT

07 JAN 30 AM 8:46

MICHELE K. MUMFORD
SHELBY COUNTY CLERK

IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

VIL LASER SYSTEMS, LLC.	*	CASE NO. 04CV000158
Plaintiff,	*	JUDGE WELBAUM (By assignment)
-vs-	*	
SHILOH INDUSTRIES, INC., et al.	*	PLAINTIFF'S NOTICE TO CONSENT TO REMITTITUR
Defendants.	*	

* * * * * * * * * * *

Plaintiff elects to accept remittitur of the judgment as ordered by the trial court in its Amended Order of January 16, 2007, thereby accepting the final judgment in the amount of $1,881,396.16.

James L. Thieman (0023595)
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IDNEY, OHIO 45365
(937) 492-1271

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been sent by fax and ordinary United States mail, postage prepaid, to Lesley Weigand, Wegman, Hessler & Vanderburg, 6055 Rockside Woods Blvd., #200, Cleveland, Ohio 44131, this 30th day of January 2007.

James L. Thieman

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JLT- th

FAULKNER,
MHAUSEN, KEISTER
& SHENK
EGAL PROFESSIONAL
ASSOCIATION
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SUITE 300
SOUTH MAIN AVENUE
IDNEY, OHIO 45365
(937) 492-1271

EXHIBIT H

acting upon such appointment, it may be acted upon at the next session of the General Assembly.

If an appointment is made after the Senate has adjourned sine die, it shall be submitted to the Senate during the next session of the General Assembly.

In acting upon an appointment a vote shall be taken by a yea and nay vote of the members of the Senate and shall be entered upon its journal. Failure of the Senate to act by a roll call vote on an appointment by the governor within the time provided for herein shall constitute consent to such appointment.

(1961)

SUPREME COURT TO DETERMINE DISABILITY OF GOVERNOR OR GOVERNOR ELECT; SUCCESSION.

§22 The Supreme Court has original, exclusive, and final, jurisdiction to determine disability of the governor or governor-elect upon presentment to it of a joint resolution by the General Assembly, declaring that the governor or governor-elect is unable to discharge the powers and duties of the office of governor by reason of disability. Such joint resolution shall be adopted by a two-thirds vote of the members elected to each house. The Supreme Court shall give notice of the resolution to the governor and after a public hearing, at which all interested parties may appear and be represented, shall determine the question of disability. The court shall make its determination within twenty-one days after presentment of such resolution.

If the governor transmits to the Supreme Court a written declaration that the disability no longer exists, the Supreme Court shall, after public hearing at which all interested parties may appear and be represented, determine the question of the continuation of the disability. The court shall make its determination within twenty-one days after transmittal of such declaration.

The Supreme Court has original, exclusive, and final jurisdiction to determine all questions concerning succession to the office of the governor or to its powers and duties.

(1976)

ARTICLE IV: JUDICIAL

JUDICIAL POWER VESTED IN COURT.

§1 The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(1851, am. 1883, 1912, 1968, 1973)

ORGANIZATION AND JURISDICTION OF SUPREME COURT.

§2 (A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the Supreme Court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

(a) Quo warranto;
(b) Mandamus;
(c) Habeas corpus;
(d) Prohibition;
(e) Procedendo;
(f) In any cause on review as may be necessary to its complete determination;
(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The Supreme Court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:
  (i) Cases originating in the courts of appeals;
  (ii) Cases in which the death penalty has been affirmed;
  (iii) Cases involving questions arising under the constitution of the United States or of this state.
(b) In appeals from the courts of appeals in cases of felony on leave first obtained.
(c) In direct appeals fron the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed.

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;
(e) In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals;
(f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court.

(C) The decisions in all cases in the Supreme Court shall be reported together with the reasons therefor.

(1851, am. 1883, 1912, 1944, 1968, 1994)

ORGANIZATION AND JURISDICTION OF COURT OF APPEALS.

§3 (A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:
(a) Quo warranto;
(b) Mandamus;
(c) Habeas corpus;
(d) Prohibition;
(e) Procedendo
(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgement that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(1968, am. 1994)

ORGANIZATION AND JURISDICTION OF COMMON PLEAS COURT.

§4 (A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas court of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the Supreme Court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of

EXHIBIT I

2505.02 Final orders.

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Effective Date: 07-22-1998; 09-01-2004; 09-02-2004; 09-13-2004; 12-30-2004; 04-07-2005; 2007 SB7 10-10-2007

EXHIBIT J

RULE 58. Entry of Judgment

(A) Preparation; entry; effect. Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, or upon the determination of a periodic payment plan, the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal.

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App.R. 4(A).

(C) Costs. Entry of the judgment shall not be delayed for the taxing of costs.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1989.]