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I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC AND GREAT GENERAL INTEREST

This case emanated from the May 9, 2003, nationally publicized shooting rampage at the Weatherhead School of Management, in the Peter B. Lewis building, on the campus of Case Western Reserve University (“CWRU” or “the University”). On that date Biswanath Halder, a former student of CWRU’s Weatherhead School, entered a classroom building and shot to death Norman E. Wallace, a thirty year old graduate student.

As is characteristic of such rampage shootings at our country’s educational institutions, this was not a random act by Halder. The true tragedy is that his rampage was foreseeable and preventable – by CWRU. There had been clear warning and notice to CWRU in June 2002 that if Halder lost his civil case regarding the intentional destruction of his computer files against a CWRU employee on appeal, he was “going to fuck those fuckers up” and kill people at the Weatherhead School. Halder made this threat of death while he displayed the hand gesture of shooting with a gun which was then communicated to CWRU, thereby placing it on actual notice of his death threat, and giving rise to a concomitant duty to protect students, staff and faculty.

Halder was a clear and present danger, known by CWRU and its Weatherhead School since about 1999. The record before the Court of Common Pleas in opposition to CWRU’s motion for summary judgment established that Halder had engaged in a protracted legal dispute with CWRU right up until the time of the shooting of Appellant’s decedent. The record further established that CWRU did not treat Halder’s claim seriously. On April 29, 2003, the Eighth District Court of Appeals dismissed Halder’s appeal of the dismissal of his lawsuit. A few days later, Halder carried out his threat as promised, by going on a shooting rampage at the Weatherhead School.

CWRU was dismissed from this action on summary judgment. The Eighth District Court of Appeals affirmed dismissal. The Ohio Supreme Court declined appellate review on Case No. 2009-1817 on December 30, 2009, Brian Wallace, Administrator of the Estate of Norman E. Wallace v. Biswanath Halder, et al..

The case was tried to a jury in Cuyahoga County against Halder alone on May 28, 2010, Cuyahoga County Case No. CV-06-591169. Motions by both Plaintiff and Halder to add as third parties CWRU employees responsible for the provocation of Halder were denied by the trial court. This denial was affirmed on appeal.

At the trial of this action Halder was not represented by counsel. This case is one of public and great general interest for the reason the Court of Appeals failed to reach the important underlying issue of the duty owed by a trial judge to a pro se defendant with established psychological problems by misconstruing the operation of Appellate Rule 3(D) and sidestepping this important substantive issue.

II. STATEMENT OF THE CASE

This action was commenced on May 9, 2006 in the Common Pleas Court of Cuyahoga County, a previously filed action having been voluntarily dismissed without prejudice on May 17, 2005. The trial of this action was scheduled to commence on September 8, 2008. On August 27, 2008, the common pleas court granted CWRU's motion for summary judgment. A notice of appeal was timely filed on September 5, 2008.

On September 15, 2008 this court sua sponte dismissed the September 5, 2008 appeal on grounds that the August 27, 2008 Order was not a final appealable Order for the reason it did not resolve all claims of all parties. On September 30, 2008 reconsideration was granted and the September 15, 2008 Order vacated for the reason the trial court's August 27, 2008 Opinion specifically determined that there is no just cause for delay of an appeal. On August 16, 2007, Biswanath Halder filed a motion for leave to file third party claims against certain CWRU employees personally. On October 23, 2007, the trial court denied the motion for leave to add third parties on grounds that Halder had no right to contribution. The trial was stayed pending appeal of the dismissal of CWRU.

The trial Court's ruling dismissing CWRU was affirmed by this Court on August 25, 2009. The Ohio Supreme Court declined to review the dismissal of CWRU on January 15, 2020. A petition for a writ of Certiorari was denied by the United States Supreme Court on May 19, 2010. The order of the Cuyahoga County Court of Common Pleas staying the trial of this action was vacated and the jury trial of this action was conducted on May 26, 2010. Prior to the trial of this action motions had been filed by both Wallace and Halder to add personal claims against third parties employed by CWRU, who were also liable for Wallace's death. The trial court denied these motions.

III. STATEMENT OF THE FACTS

This appeal arises from the Eighth District Court of Appeals refusal to review trial court's refusal to permit the filing of third party claims in a wrongful death and survivorship action predicated on negligence theories from the May 9, 2003, shooting death of Norman E. Wallace, a thirty year old graduate student at Case Western Reserve University's (CWRU) Weatherhead School of Management. The Court of Appeals decision is based on the fact the Notice of Appeal in this case allegedly did not properly specify which trial court order was being appealed.

The assailant in this case, Biswanath Halder, desired to file third party claims against certain CWRU employees for their roles in causing Mr. Wallace's death. The shooting occurred in the Peter B. Lewis Building. Norman was a 2004 candidate for a Master's in Business Administration (MBA). Norman was a student leader and the only African American male in the class of 2004, a longtime academic standout and newly elected president of the Black MBA Student Association.

Biswanath Halder moved to add third party claims for contribution against CWRU employees who had provoked him into the rampage that resulted in the shooting of Norman Wallace. The trial court issued the following ruling on Halder's motion:

10-22-07. DEFENDANT BISWANATH HALDER'S MOTION FOR LEAVE TO JOIN THIRD PARTY DEFENDANTS (FILED 8-16-07) IS DENIED. DEFENDANT HALDER'S THIRD PARTY COMPLAINT ASSERTS CLAIMS OF CONTRIBUTION AGAINST THREE CASE WESTERN RESERVE UNIVERSITY EMPLOYEES. DEFENDANT HALDER CLAIMS THAT THE INDIVIDUALS HE SEEKS TO JOIN IN THIS ACTION DESTROYED HIS CYBER PROPERTY. HE FURTHER ASSERT THAT HE WOULD NOT HAVE GONE ON A SHOOTING RAMPAGE AT THE UNIVERSITY, WHICH RESULTED IN DECEDENT NORMAN WALLACE'S DEATH, HAD THESE INDIVIDUALS NOT DELETED HIS INTERNET FILES. TAKING AS TRUE DEFENDANT HALDER'S ALLEGATIONS THAT THESE INDIVIDUAL DESTROYED HIS CYBER PROPERTY, THE COURT FINDS THAT DEFENDANT HALDER HAS NO RIGHT OF CONTRIBUTION FROM

OTHERS FOR COMMITTING THE MURDER OF NORMAN WALLACE.
CLMMH 10/23/2007 NOTICE ISSUED

Prior to trial, Plaintiff also moved to add claims against third parties. The trial court also denied Plaintiff's motion.

IV. STANDARD OF REVIEW

Appellate review of denial of a motion for leave to file a third party complaint, where denial is predicated on a determination that the movant has no right of contribution and of whether an appellate court's jurisdiction has been properly invoked, questions of law, is de novo for the reason, questions of law are reviewed de novo. See, George Ford Construction, Inc. v. Hisson, 2006-Ohio-919 (Summit County App. Ct. March 1, 2006).

V. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

A. THE TRIAL COURT VIOLATED ITS DUTY TO BISWANATH HALDER, A PRO SE LITIGANT, WHEN IT DENIED HALDER'S MOTION FOR LEAVE TO FILE A THIRD PARTY COMPLAINT AGAINST CWRU EMPLOYEES WHO HAD PROVOKED HIM INTO THE SHOOTING RAMPAGE THAT RESULTED IN THE DEATH OF NORMAN WALLACE

Under Ohio law individuals owe a duty of ordinary care to others. Perry v. Eastgreen Realty Co., (1978) 53 Ohio St.2d 51; also see, Prosser on Torts (4th ed. 1971) at 372. When a breach of the duty of ordinary care is the proximate cause of harm to another, everyone responsible for this breach is jointly and severally liable to the injured party. See, R.C. 2307.25.

In this action Biswanath Halder was alleged to have pulled the trigger on the firearm that caused Norman Wallace's death. At issue is whether Halder should have been permitted to implead other tortfeasors whose actions directly contributed to Halder pulling the trigger.

In determining whether Halder had a right to implead other persons, it should be noted that Halder was a pro se litigant.

Judges owe pro se civil litigants specific duties during the pre trial motion phase of a civil action.

Before an individual's "day in court" arrives, he must navigate the often complicated and tedious pre-trial pleading process. This process is undoubtedly unfamiliar to most lay people. In many cases it creates a hurdle that unrepresented parties must overcome to have their cases decided on the merits. Accordingly, the Supreme Court has recognized the potential for abuse and the unfair possibility of a pro se litigant's case being dismissed for procedural violations rather than on its merits.

In Haines v. Kerner, 404 U.S. 519 (1972) the Supreme Court held that judges should liberally construe pro se civil litigants' pleadings by asserting in that case:

We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Haines, supra (emphasis added).

Judges' inconsistent treatment of pro se litigants during pretrial motions inhibits these litigants' access to the judicial system. Such treatment also leads to inconsistencies among jurisdictions and contributes to the barriers facing pro se litigants in the pre-trial process. Failing to educate these unrepresented litigants of the fatal effects of certain procedural requirements, such as the intricacies of the summary judgment rule, effectively denies them their right to be heard and impedes an adjudication of their cases on the merits. Courts must provide enough assistance to pro se litigants to ensure that the litigants' rights of access to the courts are protected while maintaining judges' impartial roles in an adversary system. "How to Treat Fools" 25 J. Legal Prof. 167, Edward M. Holt. The trial judge here failed to provide any assistance whatsoever to Mr. Halder.

Although the law allows for the liberal construction of pleadings and motions filed pro se, "a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound." Sherlock v. Myers, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3 (citing Kilroy v. B.H. Lakeshore Co., 111 Ohio App. 3d 357, 363 (1996)). Thus, a pro se litigant is held to the same standard as a party who is represented by counsel.

It was error for the trial court not to liberally continue Halder's third party claim and provide him with an opportunity to prove a set of facts that would have implicated CWRU employees personally in the death of Norman Wallace. Failing to accord Halder the latitude to which he was entitled as a pro se litigant deprived Brian Wallace of the opportunity to file direct actions against these CWRU employees.

From the facts set forth below, it was error for the trial court to conclude that there was no set of facts from which Halder could state a claim.

From 1996 to 1999 Biswanath Halder was enrolled as a graduate student at the CWRU Weatherhead School of Management. After his graduation in 1999, Halder continued his studies at CWRU by enrolling in the MBA Plus program for the fall 1999 and spring 2000. As part of his studies, he used the computer lab on CWRU's campus. Halder was known to cause problems in the computer lab. On occasion, Halder logged onto up to three computers in the lab at one time, thereby preventing computer access to other students. On another occasion, a female student complained that Halder was harassing her in the lab, insisting she proofread his personal documents. In July 2000, Halder discovered that his email account had been hacked into, and all his computer files had been deleted. Halder accused Shawn Miller, a computer technician employed by CWRU, as the individual whom he believed had hacked into his computer and deleted his life's (intellectual) work

In June 2001, Halder sued Shawn Miller in the Cuyahogo County Court of Common Pleas, claiming he hacked into Halder's website. CWRU, even though not a party to the matter, provided a defense for Miller since the incident was directly related to his employment with CWRU, and Miller also counterclaimed for defamation of character and intentional infliction of emotional distress. When Miller was sued, he spoke to Marion Hogue, Dean of Students at

CWRU. Hogue had CWRU defend Miller and fight Halder's claims, and referred Miller to the University's legal counsel. Hogue did not provide any counsel or assistance to Halder even though a CWRU personnel had destroyed his files.

Halder was a pro se litigant for much of his case, giving him direct personal involvement with the University attorneys. Halder also continued to live at the same address, near many CWRU students, and he discussed it with his neighbors, CWRU law students, who in turn discussed it with other CWRU students and employees. Rather than undertake an appropriate investigation of Halder's accusations that a CWRU employee had destroyed his life's work, CWRU wrote Halder a letter in November 2001 abruptly terminating his computer lab privileges over a spam email that Halder did not send. In May 2002, the University also successfully fought Halder's motion to compel discovery and his motion to add the University as a defendant. In January 2003, at Miller's behest, the court ordered Halder to delete statements from his website – a further loss of Halder's intellectual work – in a way that he thought denied his due process. In February 2003, when Miller's lawyer was insisting on Halder's compliance, he protested to the court that he had been misinformed about his opportunity to respond.¹

Significantly, CWRU also knew its employees had **actually** hacked into Halder's website and **intentionally** provoked him. The record established that Chris Fenton, manager of the Weatherhad computer lab, and his girlfriend, Janis Kaghazwala, also a CWRU employee, had asserted their privilege against self incrimination at Halder's criminal trial in response to questions concerning whether they had hacked into and destroyed Halder's website or posted derogatory information concerning Halder on his website.

¹ The critical point is that even though Halder was no longer physically present on campus, the contact between Halder and his institution enemy was substantial, ongoing and recent. In fact during oral argument in the Court of Appeals counsel for CWRU stated CWRU is an inner city urban campus and Halder resided within in area directly adjacent to CWRU.

In May 2002, while Halder was struggling to add CWRU and other defendants to his lawsuit, Halder told CWRU law student Paul Helon that if he lost the court battle he would “fuck those fuckers up.” Halder even clearly made a gesture with his hand as a gun, showing he was going to shoot the people at CWRU Weatherhead School if he lost his appeal. Helon was so concerned for Miller’s safety that he sought out Miller and told him about Halder’s threat. Miller then reported the threat to his CWRU supervisor Roger Bielefeld,² saying “apparently Halder is interested in killing us.” Bielefeld merely told Miller not to worry and that Halder “probaby would not do anythng.” However, Miller’s concern for his safety did not dissapate.

Although Bielefeld received a letter from Halder, he met only once with Halder. Bielefeld provided Halder with absolutely no investigatory informaton Halder requested of him. Bielefeld also received an August 27, 2000 email from Halder broadcast to the University at CWRU stating that the “evil man” Shawn Miller, an employee of CWRU Weatherhead School, deleted in a few seconds everything it took Halder a lifetime to create.

Since the death threat by Halder was prefaced on Halder losing his civil appeal in his case with Miller which was being defended by CWRU, Miller’s concern for his safety dramatically elevated in late April 2003 when Halder lost his appeal. At that time Miller was so concerned Halder would try to seriously physcially harm him, that he even went to his residential police force, the Cleveland Heights Police Department, for protection. He did this since CWRU and Bielefeld had done nothing to protect him from Halder. Miller also made his immediate supervisor at CWRU aware of these threats. Miller also told his co-worker Chris Fenton of the Weatherhead Computer Lab of Halder’s threat soon after he learned of it. Based on his review of the computer trail evidence, Miller believed Fenton was actually the person who had hacked

² Bielefeld is CWRU’s Director of Research Computing and Information Technology at the Weatherhead School of Management.

into Halder's computer and maliciously deleted the files that contained Halder's perceived life work.³

Thus, many managerial, supervisor, and employee personnel at CWRU were on actual notice of the direct threat of deadly harm at the Weatherhead School by Halder should he lose his civil appeal. Further, CWRU employees (Chris Fenton and Janis Kaghazwala) had actually hacked into Halder's website and intentionally provoked Halder.

In ruling on Halder's motion to file a Third Party Complaint, the trial court should have taken into account the special nature of the academic enterprise and the special nature of risk that is attendant to this enterprise. Professor Helen DeHaven, who has undertaken an in depth study of rampage shootings in higher education, made the following pertinent observations with respect to several such circumstances in this case:

First, the analysis...adopted by the court does not take account of the special nature of the academic enterprise, nor the nature of the risk involved. Respect for intellectual work of others is a traditional academic value about which there is a high level of consensus in the academic community. It is a necessary component of academic freedom and scholarly productivity. It is common to all academic communities, especially high-ranking research universities like CWRU. When the college or university guards and implements such a value for the scholarly

³ Chris Fenton lived with girlfriend, Janis Kaghazwala, who was another CWRU employee. An investigation conducted by Halder's attorney in his lawsuit against Miller uncovered the telephone number from which Halder's computer was hacked, and this number was traced to the home of Kaghazwala. In March 2002 Halder moved to join Weatherhead School of Management into his lawsuit, and attempted to compel discovery from Weatherhead. CWRU opposed both motions and both were denied. In May 2002 Halder moved to join Kaghazwala, and that motion was also denied.

During Halder's trial for murder in 2005, Miller, who admitted that he hated Halder, testified that he figured out the identity of the culprit after his deposition was taken in Halder's civil lawsuit and that he revealed Chris Fenton's name to his attorney. At the murder trial both Fenton and Kaghazwala asserted their privilege against self incrimination when asked about the hacking. After the trial, CWRU fired both of them.

community (and, in terms of the business model trades on it), it is to be expected that it will maintain professional standards of conduct and accountability in the computer labs where intellectual work is pursued. If a person's intellectual work is nevertheless deliberately destroyed [as in Halder's case], a college or university should be at least as diligent in discovering the culprits as defending against false complaints. If it negligently fails to take appropriate action, its inattention can contribute to significant disorder and dysfunction not least by disappointing the legitimate expectations of its students with respect to the safety of their work. Second, the analysis [by the trial court in granting CWRU's motion for summary judgment against Appellant] does not take into account the special risks of academic life. Scholars may become deeply disturbed over issues involving their intellectual work product. In the [Norman E.] Wallace litigation, the University made much of the fact that Halder had no history of violent or criminal behavior and was not known to own a gun, but the same can be said of most academic rampagers, few of whom make direct threats. Guns are easy to obtain. Every rampage killer also has obtained his weapons quickly and lawfully. Murders that occur as a result of academic-related conflicts are most likely to occur at the Institution, not at the victim's home or some other place. In a rampage, innocent people are always hurt. Given the academy's experience with violent graduate students, a reasonable jury might find that a prudent college or university should take it seriously when a student with known grievances and frustrations about the destruction of his work actually threatens to kill those responsible. A jury might well find it imprudent for a school to let its employees treat threats by students as purely personal conflicts, with only personal safety implications. On the other hand, it is both prudent and consistent with a school's educational mission to discourage threatening behavior.

Third, the premises liability analysis [undertaken by the trial court in this case] elevates location over relationship in a way that does not necessarily comport with the realities of the situation. In terms of the foreseeability of his attack on the school, the analysis adopted by the court placed far greater emphasis on the fact that Halder left campus in August 2000 than on the substantial, and increasingly negative, relationship that continued through his litigation against the University and its personnel.

Helen DeHaven, *The Elephant in the Ivory Tower: Rampages in Higher Education and the Case for Institutional Liability*, J. of College and Inst. Law, at 601-603 (footnotes omitted).

To summarize this evidence, the record on established that a CWRU computer lab employee deliberately hacked the website of Halder in July 2000, while Halder was still a student in good standing at the University. Halder thereafter engaged in a protracted dispute with CWRU right up until the time of the shooting of Appellant's decedent. Halder sent broadcast emails, filed complaints with University and law enforcement officials concerning his grievances against CWRU, and eventually filed litigation against CWRU employee, Sean Miller. CWRU financed Miller's defense, and also successfully fought Halder's attempt to obtain discovery and join CWRU in the action. Halder communicated death threats to CWRU that were of such a disturbing nature that law student Phil Helon warned Shaw Miller, who then reported the threats to his supervisor in the computer lab. Later, upon Halder's case against Miller being dismissed, Halder's threats produced such fear that Miller requested both through CWRU and local police, additional security for his home and family. Critically, these activities occurred in close proximity – there was no “lengthy gap between Halder's last contact with CWRU in August 2000 and the shooting death of Norman Wallace in May 2003”. Chris Fenton and his girlfriend had actually intentionally provoked Halder by deleting his files. Deans Grant and Bielfeld shrugged off their personal responsibility despite personal knowledge of Halder's precarious psychological state and the fact he had engaged in fear inducing behavior by threatening Sean Miller. Halder should have been permitted to sue these parties and Wallace afforded an opportunity to file direct claims.

**B. THE COURT OF APPEALS MISCONSTRUED THE OPERATION OF
APPELLATE RULE 3(D)**

In this matter the Court's Opinion states:

In his sole assignment of error, Wallace argues that the trial court erred when it denied Halder's motion for leave to file a third-party complaint and ultimately,

determined that Halder had no right of contribution from others for the wrongful death of Norman Wallace.

We note that although Wallace's notice of appeal indicates that he is appealing from the trial court's May 27, 2010 journal entry denying his May 25, 2010 motion to add John Does 6-8 as parties to this action, Wallace does not make any argument in his merit brief addressing this decision. Rather, Wallace's arguments in his sole assignment of error relate only to the trial court's decision denying Halder's 2007 motion for leave to file a third-party complaint and concluding that Halder had no right of contribution.

App.R. 3(D) provides, in pertinent part, that the notice of appeal "shall designate the judgment, order or part thereof appealed from ***." Wallace's notice of appeal only designates only the trial court's order denying his May 2010 motion as the order or judgment appealed from.

It is axiomatic that the notice of appeal must specify the judgment being appealed. See, App.R. 3(D); State v. Pond, Cuyahoga App. No. 91061, 2009-Ohio-849. ¶4. Therefore, we lack jurisdiction to consider any assignment of error regarding Halder's 2007 motion and subsequent order denying said motion. See, Slone v. Bd. Of Embalmers & Funeral Dirs. (1997), 123 Ohio App.3d 545, 704 N.E.2d 633; Parks v. Baltimore & Ohio RR (1991), 77 Ohio App.3d 426, 427, 602 N.E.2d 674 (holding that a court of appeals lacks jurisdiction to review a judgment or order that is not designated in the notice of appeal).

App.R. 3(D) provides in pertinent part "[t]he notice of appeal ***shall designate the judgment, order or part thereof appealed from ***" App.R. 3 must be construed in light of the purpose of a notice of appeal, which is to notify appellees of the appeal and advise them of 'just what appellants*** [are] undertaking to appeal from.' Parks v. Baltimore & Ohio RR (1991), 77 Ohio App.3d 426, 428, citations omitted.

A court has complete control over its interlocutory orders until the entry of a final judgment into which they are merged. An appeal from the final judgment would therefore, bring up all interlocutory rulings affecting the rights finally adjudged.*** All interlocutory orders and decrees are merged in the final judgment.' 9 Moore, supra, at 194-196, Section 110.18; see, also, id., 49-54, Section 110.08[1]; ***.") and DiLacqua v. DiLacqua (1993), 88 Ohio App.3d 48, 57 ("interlocutory orders are no immediately appealable: 'Since they are not final orders, as defined

in R.C. 2505.02, interlocutory orders are not appealable under R.C. 2505.03. This does not mean that they are not appealable at all. Claimed prejudicial error with respect to an interlocutory order may be reviewed on appeal after a judgment, decree, or final order is entered in the case in which the interlocutory order was entered.’ Whiteside, Ohio Appellate Practice (1991) 34-35.”). Also see, Horner v. Toledo Hospital (1993) 94 Ohio App.3d 282.

Appellant Rule 3(D) states a notice of appeal must designate the judgment, order or part thereof appealed from. Here, Appellant appealed from the May 27, 2010, final judgment. All previous orders including the order denying Halder the right to contribution were merged into the May 27, 2010 judgment. The denial of Halder’s motion for contribution and Appellant’s request to add John Does is essentially the same issue. Here persons from whom Halder’s sought contribution are the same persons Appellant sought to add as John Does.

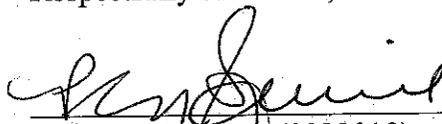
It is a miscarriage of justice to not construe App. Rule 3(D) in its intended light, which is to place Mr. Halder on notice of the grounds for appeal. The Notice of Appeal indicated that it was from the May 27, 2010 final judgment into which all interlocutory orders were merged. Halder was clearly aware from the notice and its reference to adding John Does that the appeal concerned the addition of the culprits who provoked him as parties to this action. To merely sidestep this critical issue is a miscarriage of justice.

VI. CONCLUSION

The trial court erred in denying Halder's motion to file a third party claim and Plaintiff's motion to add John Does. The Court of Appeals misconstrued the operation of Appellate Rule 3(D) in refusing to grant review of the trial court's action.

The Appellate court should be reversed and this matter remanded for a contribution hearing under R.C. 2307.26 among all implicated CWRU employees, Fenton, Kaghazwala, Dean Bielefeld and Dean Grant as defendants.

Respectfully submitted,



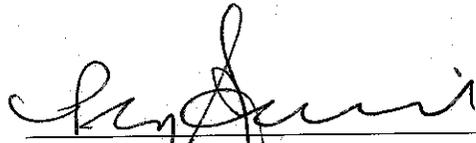
Percy Squire, Esq. (0022010)
Percy Squire Co., LLC
514 S. High Street
Columbus, Ohio 43215
614-224-6528 Telephone
614-224-6529 Facsimile
psquire@sp-lawfirm.com

COUNSEL FOR APPELLANT,
BRIAN WALLACE

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served April 28, 2011 to the following via regular mail or email:

Biswanath Hadler, Inmate #A501980
Mansfield Correctional Institution
PO Box 788
Mansfield, Ohio 44901



Percy Squire, Esq. (0022010)

APPENDIX

- APPENDIX A.** TRIAL COURT OPINION
- APPENDIX B.** HALDER MOTION TO FILE THIRD PARTY COMPLAINT
- APPENDIX C.** COURT OF APPEALS OPINION
- APPENDIX D.** COURT OF APPEALS OPINION DENYING RECONSIDERATION
- APPENDIX E.** NOTICE OF APPEAL



48190447

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE, ADMIN.
Plaintiff

BISWANATH HALDER ETAL
Defendant

Case No: CV-06-591169

Judge: DICK AMBROSE

JOURNAL ENTRY

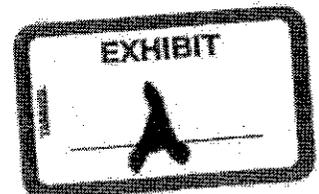
10-22-07. DEFENDANT BISWANATH HALDER'S MOTION FOR LEAVE TO JOIN THIRD PARTY DEFENDANTS (FILED 8-16-07) IS DENIED. DEFENDANT HALDER'S THIRD PARTY COMPLAINT ASSERTS CLAIMS OF CONTRIBUTION AGAINST THREE CASE WESTERN RESERVE UNIVERSITY EMPLOYEES. DEFENDANT HALDER CLAIMS THAT THE INDIVIDUALS HE SEEKS TO JOIN IN THIS ACTION DESTROYED HIS CYBER PROPERTY. HE FURTHER ASSERTS THAT HE WOULD NOT HAVE GONE ON A SHOOTING RAMPAGE AT THE UNIVERSITY, WHICH RESULTED IN DECEDENT NORMAN WALLACE'S DEATH, HAD THESE INDIVIDUALS NOT DELETED HIS INTERNET FILES. TAKING AS TRUE DEFENDANT HALDER'S ALLEGATIONS THAT THESE INDIVIDUALS DESTROYED HIS CYBER PROPERTY, THE COURT FINDS THAT DEFENDANT HALDER HAS NO RIGHT OF CONTRIBUTION FROM OTHERS FOR COMMITTING THE MURDER OF NORMAN WALLACE.

Judge Signature

10/23/2007

10/23/2007

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8/13/07

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE, etc.)	Case No. CV-06-591169
)	
Plaintiffs)	Judge Dick Ambrose
)	
-vs-)	
)	
BISWANATH HALDER, et al.)	<u>Defendant Biswanath Halder's</u>
)	<u>Motion for Leave to Join</u>
Defendants)	<u>Third-Party Defendants</u>

Upon the attached affidavit of Biswanath Halder duly sworn to on August 8, 2007, and upon the attached Memorandum of Law dated August 10, 2007, the Defendant Biswanath Halder moves, pursuant to Civil Rule 14(A), for leave as a Third-Party Plaintiff to join Shawn Miller, Christopher Fenton and Janis Kaghazwala as Third-Party Defendants. A copy of Defendant Biswanath Halder's proposed Third-Party Complaint is attached hereto as Exhibits "C1" and "C2".

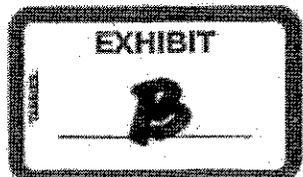
The reason for this request is that the Defendant Biswanath Halder is appearing pro se, and that recently he learned that he can join third parties as defendants. As this case is still in its initial stages, no party will be prejudiced by the granting of this motion, and it is in the interest of justice to join all the indispensable parties in this action.

Respectfully submitted,



Biswanath Halder A501980
 PO Box 788
 Mansfield, Ohio 44901-0788
 Third-Party Plaintiff pro se

Dated: Mansfield, Ohio
 August 10, 2007



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE
Administrator of the
Estate of Norman E Wallace

Plaintiff

-vs-

BISWANATH HALDER A501980
1150 N Main Street
Mansfield, Ohio 44903-9718

Defendant and
Third-Party Plaintiff

and

JOHN DOES 1-10

Defendants

and

CASE WESTERN RESERVE UNIVERSITY
10900 Euclid Avenue
Cleveland, Ohio 44106
Defendant

-vs-

SHAWN MILLER
3356 Ormond Road
Cleveland Heights, OH 44118

Third-Party Defendant

and

CHRISTOPHER Fenton
16032 Squirrel Hollow Lane
Strongsville, Ohio 44136

Third-Party Defendant

and

JANIS KACHASWALA
16032 Squirrel Hollow Lane
Strongsville, Ohio 44136

Third-Party Defendant

Case No. CV-06-591169

Judge Dick Ambrose

THIRD-PARTY COMPLAINT

Defendant and Third-Party Plaintiff Biswanath Halder states for his Third-Party Complaint against Third-Party Defendants Shawn Miller, Christopher Fenton and Janis Kaghazwala as follows:

1. On May 9, 2006, Plaintiff Brian Wallace has filed against Defendants Biswanath Halder and Case Western Reserve University a Complaint a copy of which is attached hereto as Exhibits "Y11" through "Y16".

2. On July 13, 2000, Shawn Miller, Christopher Fenton and Janis Kaghazwala, three employees of Defendant Case Western Reserve University, conspired to hack Defendant Biswanath Halder's Unix shell account at his ISP (halder@apk.net). Everything that took place in this case from July 2000 onwards (including the violent incident at Case Western Reserve University on May 9, 2003) is the outcome of a series of illegal acts (conspiracy, unauthorized access of Unix shell account, deletion of data, perjury, etc) committed by Shawn Miller, Christopher Fenton and Janis Kaghazwala (and several other employees, officers, attorneys and agents of Case Western Reserve University who conspired to cover-up the unlawful and illegal actions of Shawn Miller, Christopher Fenton and Janis Kaghazwala).

Wherefore, Biswanath Halder demands judgment against Shawn Miller, Christopher Fenton and Janis Kaghazwala, jointly and severally, for all sums that may be adjudged against Biswanath Halder in favor of Plaintiff on the complaint of Brian Wallace, plus interest, costs, and such other and further relief as the Court deems just and proper.


Biswanath Halder A501980
PO Box 788
Mansfield, Ohio 44901-0788
Third-Party Plaintiff pro se

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE, etc.)	Case No. CV-05-591169
)	
Plaintiffs)	Judge Dick Ambrose
)	
-vs-)	
)	
BISWANATH HALDER, et al.)	<u>MEMORANDUM OF LAW</u>
)	
Defendants)	

FACTS

The Defendant Biswanath Halder ("Halder") received a Master's Degree in business administration (MBA) from the Weatherhead School of Management ("Weatherhead") of Case Western Reserve University ("Case Western") in 1999. During the summer of 2000, Halder was a regular user of computer laboratories at Weatherhead.

In December of 1996, Halder obtained a Unix shell account with APK.Net (halder@apk.net), an Internet service provider (ISP) located in Cleveland, Ohio. In the summer of 1997, Halder started building a personal homepage that contained valuable information on a variety of issues:

<http://www.halder.ws/>
<http://junior.apk.net/~halder/>

Halder did virtually anything and everything on the computer:

- o He had created an action-oriented electronic network of Indians; he ran the network through the Internet.
- o He had done his coursework for his classes at Case Western on the computer.
- o He developed his homepage on the computer.
- o He looked for employment on the Internet.
- o He was in the process of forming a business over the Internet.
- o He tried to solve mankind's problems over the Internet.

Some of the documents Halder had in his Unix shell account at his

ISP (halder@apk.net) were irreplaceable.

Upon receiving an MBA in 1999, Halder looked for employment, without any success. The primary option left with him at that time was to form a business, and he was progressing in that direction. As of July 13, 2000, Halder was about three months away from forming a consulting business to help Indian people form businesses.

Shawn Miller ("Miller"), a computer lab assistant at the Weatherhead School of Management, Christopher Fenton ("Fenton"), the systems administrator at the Weatherhead School of Management, and Janis Kaghazwala ("Kaghazwala"), an employee at the controller's office at Case Western Reserve University, conspired to hack Halder's Unix shell account at his ISP (halder@apk.net) on July 13, 2000. From that day onwards, Miller, Fenton and Kaghazwala (and several other men and women who tried to cover-up their unlawful actions) have committed a series of illegal acts.

Conspiracy by Miller
(ORC § 2923.01 and 18 USCA § 373 et seq)

On July 13, 2000, Halder left the Weatherhead computer lab shortly after 21:00 hours. Miller was present in the Weatherhead computer lab at that time. Immediately afterwards, Miller called Fenton at home. Then, using Kaghazwala's telephone number, Fenton hacked Halder's Unix shell account at his ISP (halder@apk.net) (Exhibits "B08", "M12", "M20", "R12", "R55", and "V55").

Conspiracy by Fenton
(ORC § 2923.01 and 18 USCA § 373 et seq)

On July 13, 2000, Fenton conspired with Miller to hack Halder's Unix shell account at his ISP (halder@apk.net). And Fenton got Kaghazwala into the conspiracy (Exhibits "B08", "R55" and "V55").

Conspiracy by Kaghazwala
(ORC § 2923.01 and 18 USCA § 373 et seq)

On July 13, 2000, Miller and Fenton conspired to hack Halder's Unix shell account at his ISP (halder@apk.net), and they got Kaghazwala into the conspiracy. Using Kaghazwala's telephone number, Fenton accessed Halder's Unix account (Exhibits "B08", "R55" and "V55").

Unauthorized Access of Unix Account by Fenton
(ORC § 2913.04 and 18 USCA § 1030)

On July 13, 2000, Fenton illegally accessed Halder's Unix shell account at his ISP (halder@apk.net) through NaviPath and 1stUp.com (Exhibits "B08", "M12", "M20", "R55" and "V55").

Destruction of Data by Fenton
(ORC § 2913.42 and 18 USCA § 1030)

On July 13, 2000, Fenton deleted all of the files (more than 1,100 of them) from the Unix shell account of Halder (halder@apk.net) (Exhibits "B08", "M12", "M20", "R12", "R55" and "V55").

Perjury by Miller
(ORC § 2921.11 and 18 USCA § 1621)

On September 28, 2001, Miller claimed (under oath) that he never heard of Kaghazwala (Exhibit "I30"). The fact is that Kaghazwala is the girlfriend of Miller's friend Fenton (Exhibit "J75"). Miller committed perjury to save himself, his friend Fenton, and Fenton's girlfriend Kaghazwala (all three conspired to hack Halder's Unix account). But for Miller's perjury, the issue (hacking of Halder's Unix account) could have been resolved in the year 2001 peacefully through the legal process.

Perjury by Kaghazwala
(ORC § 2921.11 and 18 USCA § 1621)

On June 18, 2002, Kaghazwala submitted an affidavit (under oath)

to the Court stating that "the Affiant never accessed or had any reason to access any of Mr. Halder's files," and that "the Affiant never deleted or had any reason to delete any of Mr. Halder's files." (Exhibit "K88") At all times Kaghazwala knew full well that her live-in boyfriend Fenton was the systems administrator at Weatherhead, that Fenton and Miller were close friends, that Fenton and Miller shared adjoining desks in room #420 at Weatherhead, that it was Fenton who accessed Halder's files, and that it was Fenton who deleted Halder's files (Exhibits "B08", "M20", "R12", "R55" and "V55"). Kaghazwala committed perjury to save herself, her boyfriend Fenton, and Fenton's friend Miller. But for Kaghazwala's perjury, the issue (backing of Halder's Unix account) could have been resolved in the year 2002 peacefully through the legal process.

LAW and ANALYSIS

Rule 14(A) of the Rules of Civil Procedure states, in pertinent part:

At any time after commencement of the action a defending party, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than fourteen days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action.

"In order to bring a third-party claim under Civ.R. 14(A), the claim must be derivative of the outcome of the main claim, and the third-party defendant must be 'secondarily liable' or 'liable over.'" Franklin County v Faxson (Franklin 2003), 152 Ohio App3d 193, 200, 787 NE2d 59, 64. See also, Spalding v Coulson (Cuyahoga 2001), 147 Ohio App3d 371, 379, 770 NE2d 1060, 1067; Renacci v

Martell (Medina 1993), 91 Ohio App3d 217, 220, 632 NE2d 536, 538.
"A third-party claim is inappropriate where the right or duty set forth in the third-party complaint alleged to have been violated does not emanate from the plaintiff's claim but exists wholly independent of it." Franklin County, supra, 152 Ohio App3d at 200, 787 NE2d at 64; Spalding, supra, 147 Ohio App3d at 379, 770 NE2d at 1067.

It is abundantly clear from the foregoing that, but for the criminal actions of Miller (conspiracy, perjury, etc), Fenton (conspiracy, unauthorized access of Unix account, destruction of data, etc) and Kaghazwala (conspiracy, perjury, etc):

- o Biswanath Halder would have gone on with his life -- as of July 13, 2000, Halder was in the process of forming a business; and his business could have solved some of mankind's problems.
- o There would not have been any violence at Case Western Reserve University on May 9, 2003.
- o Norman Wallace would be practicing his profession today; he would have been a productive member of society.
- o None of the following lawsuits would have ever been filed:
 - Halder v Miller, Court of Common Pleas Docket #CV-01-441308
 - Halder v Miller, Court of Appeals Docket #CA-02-081956
 - State v Halder, Court of Common Pleas Docket #CR-03-437717
 - Wallace v Halder, Court of Common Pleas Docket #CV-05-562236
 - State v Halder, Court of Appeals Docket #CA-06-087974
 - Wallace v Halder, Court of Common Pleas Docket #CV-06-591169
 - Halder v Miller, Court of Appeals Docket #CA-07-089827
- o The society would have been somewhat more peaceful and somewhat more prosperous.

Hence, Miller, Fenton and Kaghazwala (and several other men and women who conspired to cover-up their evil acts) are liable to Biswanath Halder for all of the Plaintiff Wallace family's claim against the Defendant Biswanath Halder. See, e.g., Nationwide Insurance Company v Isreal (Franklin 1995), 116 Ohio App3d 671, 674, 688 NE2d 1126, 1128 (Third-party complaint that was filed

against other motorist within 28-day leave period granted defendant by trial court in vacating default judgment against him in subrogation action was timely, even if filed more than four years after accident.); Henry v Consolidated Stores (Franklin 1993), 89 Ohio App3d 417, 423, 624 NE2d 796, 800 (Although action for contribution may be derivative of plaintiff's claim, it is not dependent on plaintiff's legal prosecution of that claim, and defendant with action for contribution need not be held at peril to plaintiff's diligence in naming all potential co-tortfeasors as defendants.).

Finally, under the doctrine of respondeat superior, Case Western Reserve University is liable for the criminal actions of Miller, Fenton and Kaghazwala (and several other individuals) because they committed their illegal and unlawful actions within the scope of their employment. Accord, Burns v Prudential Securities, Inc (Marion 2006), 167 Ohio App3d 809, 821, 857 NE2d 621, 629 (The trial court found that both Pickett and PSI were liable for breach of contract, conversion and breach of fiduciary duty and that PSI was vicariously liable for the tortious actions of Pickett committed within the scope of his employment by virtue of respondeat superior.); Czarney v Porter (Cuyahoga 2006), 166 Ohio App3d 830, 837, 853 NE2d 692, 697 (Under the doctrine of respondeat superior, a hospital is liable for the negligent acts of its employees.); Dunlap v WL Logan Trucking (Franklin 2005), 161 Ohio App3d 51, 55, 829 NE2d 356, 359 (The doctrine of respondeat superior renders an employer liable for the negligence of its employees.); Ferrito v Alejandro (Summit 2000), 139 Ohio App3d 363, 369, 743 NE2d 978, 983 (For the doctrine of respondeat

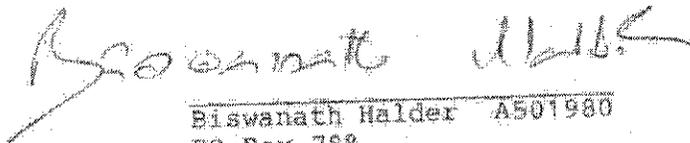
superior to apply, an employee must be liable for a tort committed in the scope of his employment.); Wille v Hunkar Laboratories (Hamilton 1998), 132 Ohio App3d 92, 100, 724 NE2d 492, 497-8 (In Ohio, an employer, as an entity, may be held liable for the unlawful harassing conduct of one of its employees under the doctrine of respondeat superior.); Watkins v Cleveland Clinic (Cuyahoga 1998), 130 Ohio App3d 262, 279, 719 NE2d 1052, 1064 (Under the doctrine of respondeat superior, any person who controls the physician in a principal-agent relationship is liable for unlawful acts by the physician that are within the scope of their relationship.); Ohio Government Risk Management Plan v County Risk Sharing Authority (Fulton 1998), 130 Ohio App3d 174, 183, 719 NE2d 992, 998 (There is no dispute that Demaline was using Fulton County's ambulance with its permission. Additionally, because Wauseon was Demaline's employer, under the theory of respondeat superior, Wauseon was legally responsible for the use of the ambulance."); Anania v Daubenspack Chiropractic (Clark 1998), 129 Ohio App3d 516, 521, 719 NE2d 480, 484 (Employees of chiropractic clinic could establish respondeat superior liability, as necessary to prevail on hostile-work-environment sexual harassment claim against clinic, by showing that employer knew or should have known of harassing behavior, whether by patients or other employees, and failed to take corrective action.); White v DePuy, Inc (Butler 1998), 129 Ohio App3d 472, 496, 719 NE2d 450, 460 (Under the doctrine of respondeat superior, a hospital is liable for the negligent acts of its employees.); Cincinnati Insurance Company v Haack (Montgomery 1997), 125 Ohio App3d 183, 190, 708 NE2d 214, 218 (The doctrine of respondeat superior

provides that the master is responsible for damages resulting from the negligence of his servant when, at the time of the accident, the servant was acting within the scope and course of its employment with the master or in the business of the master.); King v Department of Rehabilitation and Correction (Court of Claims (1997), 90 Ohio Misc2d 46, 49, 695 NE2d 677, 679 (Since the employee was acting on behalf of the department, it is liable for its employee's negligence under the doctrine of respondent superior.)).

CONCLUSION

For the reasons discussed above, the Defendant Biswanath Halder requests that the Court grant the Motion to Join Shawn Miller, Christopher Fenton and Janis Kaghazwala as Third-Party Defendants.

Respectfully submitted,



Biswanath Halder A501980
PO Box 788
Mansfield, Ohio 44901-0788
Defendant pro se

Dated: Mansfield, Ohio
August 10, 2007

CERTIFICATE OF SERVICE

On August 13, 2007, the Defendant and Third-Party Plaintiff Biswanath Halder served a copy of the foregoing Motion for Leave to Join Third-Party Defendants along with the Memorandum of Law dated August 10, 2007 and the Affidavit of Biswanath Halder dated August 8, 2007 by first class mail, postage prepaid, upon the following:

1. Percy Squire, Esq, Percy Squire Co, LLC
514 S High Street, Columbus, Ohio 43215-4294
Attorney for Plaintiff Brian Wallace
2. Norchi, Barrett & Forbes LLC, Commerce Park IV
23240 Chagrin Boulevard, Suite 600, Beachwood, Ohio 44122
Attorney for Defendant Case Western Reserve University
3. Jennifer Schwartz, Esq, Schwartz Downey Company
1616 Guildhall, 45 W Prospect Avenue, Cleveland, Ohio 44115
Attorney for Third-Party Defendant Shawn Miller
4. Christopher Fenton
16032 Squirrel Hollow Lane, Strongsville, Ohio 44136
Third-Party Defendant pro se
5. Janis Kaghazwala
16032 Squirrel Hollow Lane, Strongsville, Ohio 44136
Third-Party Defendant pro se

Biswanath Halder

Biswanath Halder A501980
PO Box 788
Mansfield, Ohio 44901-0788
Third-Party Plaintiff pro se

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE, etc.

Plaintiffs

-vs-

BISWANATH HALDER, et al.

Defendants

Case No. CV-06-591169

Judge Dick Ambröse

AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO JOIN
THIRD-PARTY DEFENDANTS

State of Ohio)
) ss:
County of Richland)

Biswanath Halder ("Halder"), being duly sworn, deposes and says that the following chain of events took place in this matter since the year 2000:

01. 14-Jun-2000 (Wed): At the hour of 21:51:00, an unknown, unidentified individual left a series of malicious and libelous comments about Halder on Halder's guestbook (in his homepage) hosted by hta1GEAR, the Lycos Network (a CMGI company), stating as follows (Exhibit "001"):

Bizzy Halder is a moron. This guy makes a living out of creeping people out. From his fake hair, to his fake teeth, his whitey tighty shorts and pants, to his shit stained sweaters this guy is a LOON. He's been kicked out of every lab on campus and everyone makes fun of him. So let's not even talk about credibility. Don't listen to a word this guy says.

Halder had reasons to believe that Shawn Miller ("Miller"), a computer lab assistant at the Weatherhead School of Management ("Weatherhead") of Case Western Reserve University ("Case Western") left the above messages on Halder's guestbook.

02. 07-Jul-2000 (Fri): At the hour of 18:56, an employee of

Weatherhead Technology Group, in violation of federal and state statutes (18 USCA § 1030 and ORC § 2913.041), accessed Halder's Unix shell account at his ISP (halder@apk.net) from room #446 of Weatherhead (Exhibits "K05", "K15" and "M20"). Subsequently, in violation of Ohio state statute (ORC § 2921.12), the management of Weatherhead (whose personalities are in perfect order) moved the computer that the cyber-criminal used to access Halder's Unix account from room #446 to room #435 (Exhibits "K05" and "K55"). This way, Halder would not be able to place the cyber-criminal (an employee of Weatherhead) at that specific computer at the given time.

03. 13-Jul-2000 (Thu): Upon discovering the libelous messages in his guestbook, Halder wrote a letter to Roger Bielefeld ("Bielefeld"), the Director of Information Technology at Weatherhead, asking him to take disciplinary actions against Miller (Exhibit "K10"):

Shawn Miller, one of the employees of the WSOM Computer Center, has left malicious and libelous comments on my guestbook (in false name of course).
<http://junior.apk.net/~halder> => Guest Book (record #4)
I demand immediate disciplinary action be taken in this matter.

I thank you for your prompt assistance.

Halder handed over the letter to Bielefeld after the hour of 16:00. Halder also handed over a copy of the letter to Dean William Lairlaw of the Weatherhead School of Management.

04. 13-Jul-2000 (Thu): Halder worked in the Weatherhead computer laboratory until the hour of 21:00, when he went home (Exhibit "M20"). At that time, Miller was present in the Weatherhead computer laboratory.

05. 13-Jul-2000 (Thu): Barely 26 minutes after Halder left the lab (at the hour of 18:26:42 California time, i.e., 21:26:42 Ohio time), an unknown, unidentified individual registered the e-mail address "mongo6666@altavista.com" with the AltaVista Company (address: 1070 Arastradero Road, Palo Alto, CA 94304) (a CMGI company) under a fictitious name and a fictitious address (Exhibits "P55" and "P56").
06. 13-Jul-2000 (Thu): Five minutes later (at the hour of 21:31), the same individual (mentioned in the previous paragraph) illegally (in violation of 18 USCA § 1030, ORC § 2913.04 and ORC § 2913.42) accessed Halder's Unix shell account at his ISP (halder@apk.net), and deleted all of the files from his account that took Halder his lifetime to create (Exhibits "M12" and "R12").
07. 13-Jul-2000 (Thu): Thirty-one minutes later (at 10:02 hour), an unknown, unidentified individual left another series of malicious and libelous comments about Halder on Halder's guestbook, stating as follows (Exhibit "O01"):
- You suck so much ass, what is wrong with you
retard?
Go get a life or something.. and stop harrasing
people around you...
Geez..
You give people a bad name..
People around you don't like you, so take a hike
and get out of our lives.
08. 14-Jul-2000 (Fri): Halder learned from his ISP (APK.Net) that the illegal access to his account came from NaviPath (address: 800 Federal Street, Andover, MA 01810) (a CMGI company) (Exhibit "M12"). Upon contacting NaviPath, Halder learned that the illegal access originated at 1stUp.com (address: 575

Market Street, San Francisco, CA 94105) (a CMGI company)
(Exhibit "R12").

09. 14-Jul-2000 (Fri): Halder brought such cyber-crime to the attention of the Federal Bureau of Investigation (Congress enacted laws prohibiting cyber-crime -- 18 USCA §1030). The FBI harassed Halder and declined to take any actions against the cyber-criminal. Thereafter, Halder brought such inaction (on the part of the FBI) to the attention of the US Senators and the US Congresspersons (Exhibits "F20" through "F22" and "F40" through "F42"). All of them declined to protect Halder's statutory rights.
10. 20-Jul-2000 (Thu): Halder met with the authorities at Case Western, and showed them evidence that proves the liability of Case Western in the criminal actions of a cyber-criminal (an employee of Case Western). Case Western has the expertise as well as the resources to solve cyber-crime and to take appropriate actions against criminals. Case Western could have resolved the entire situation at that time through administrative and legal process. Instead, Case Western decided to defend and protect the unlawful and illegal actions of a cyber-criminal (who happens to belong to the "master race"). Case Western also decided to destroy the professional career and the personal life of the victim of the cyber-crime (Exhibit "X22") (who happens to belong to an "inferior race"). On both counts Case Western succeeded by committing a series of illegal acts.
11. 28-Jul-2000 (Fri): Halder brought such criminal actions to the attention of Cleveland Police (State laws prohibit cyber-crime

-- ORC § 2913.04 and ORC § 2913.42). The police covered-up the cyber-crime (Exhibit "E30"). Then, Halder brought such cover-up (on the part of the police) to the attention of Cleveland mayor and city councilpersons (Exhibits "F31" through "F34", "F36" and "F37"). All of them stood behind the police (Exhibit "F35").

12. 27-Aug-2000 (Sun): Halder brought such unlawful and illegal actions to the attention of staff, faculty, students and alumni of Case Western Reserve University (Exhibits "K30", "K60" and "K61"). All but one of them stood behind the cyber-criminal (Exhibit "K15").
13. 07-Jun-2001 (Thu): To resolve the issue through the legal process, Halder commenced a civil action against Shawn Miller in the Cuyahoga County Court of Common Pleas (Docket #CV-01-441308) for illegally accessing his Unix shell account at his ISP (halder@apk.net) and deleting all of the files from his account in violation of federal and state statutes (18 USCA § 1030, ORC § 2913.04 and ORC § 2913.42) (hereinafter "civil case") (Exhibit "A45").
14. 17-Jul-2001 (Tue): Halder served a subpoena upon NaviPath (at 800 Federal Street, Andover, MA 01810) requesting certain documents relevant to this action (Exhibits "R50" and "R51").
15. 30-Jul-2001 (Mon): In response to Halder's subpoena, NaviPath claimed that the illegal access to Halder's Unix shell account at his ISP (halder@apk.net) on July 13, 2000 came from the telephone number 440-572-6047 (Exhibit "R55"):

Start Time: 2000-07-13 21:30:51 Eastern
Stop Time: 2000-07-13 21:35:43 Eastern
User ID: mongo6666@altavista.net

Called: 4403252211
Caller ID: 4405726047
IP Address: 216.67.36.186
Customer ID: FIRSTUP

16. 13-Aug-2001 (Mon): In response to Halder's subpoena, Ameritech provided the following information for the telephone number 440-572-6047 (Exhibit "V55"):

Phone Number: 440-572-6047/440-572-4524
Billing Name: Janis Kaghazwala
Billing Address: 16032 Squirrel Hollow Lane
Strongsville, OH 44136

17. 26-Sep-2001 (Fri): At his deposition (under oath) in the civil case (CV-01-441308), Shawn Miller (whose personality is in perfect order) claimed that he never heard of Janis Kaghazwala (Exhibit "I30"):

Q Do you know somebody with the last name K-a-g-h-a-z-w-a-l-a?
A It is pretty safe to say I never heard that name before.

18. 24-Apr-2002 (Wed): Halder wrote a letter to Janis Kaghazwala ("Kaghazwala") asking her to meet with Halder to clear up this situation as NaviPath claimed that the illegal access to Halder's Unix account came from her telephone number (Exhibit "K54"). In addition, Halder talked to Kaghazwala, twice, once before writing the letter, and once after writing the letter. After Halder talked to Kaghazwala for the second time, she said that she was going to consult with some of her friends and relatives, and call Halder back to set up a date, time and place for a meeting. Halder never heard from Kaghazwala.
19. 17-May-2002 (Fri): Halder moved to join Janis Kaghazwala as a party defendant in the civil case (Docket #CV-01-441308) (Exhibit "A43").
20. 18-Jun-2002 (Tue): Kaghazwala filed a "Notice to Strike and/or

- Deny plaintiff's Motion to Join Janis Kaghazwala as Defendant" (Exhibits "K85" through "K87"). Kaghazwala (whose personality is in perfect order) also filed an affidavit stating that "the Affiant never accessed or had any reason to access any of Mr. Halder's files," and that "the Affiant never deleted or had any reason to delete any of Mr. Halder's files." (Exhibit "K88")
21. 28-Jun-2002 (Fri): The Court denied Plaintiff's Motion to Join Janis Kaghazwala as a Party Defendant (and the Court decided ALL motions against the Plaintiff Biswanath Halder in the civil case) (Exhibits "A41" through "A45").
22. 26-Sep-2002 (Thu): The Court granted summary judgment in favor of the Defendant Shawn Miller and against the Plaintiff Biswanath Halder in dismissing the complaint (Docket #CV-01-441308) (Exhibits "A41" through "A45").
23. 09-Nov-2005 (Wed): At the beginning of the trial in the criminal action State of Ohio v Biswanath Halder (Docket #CR-03-437717) (hereinafter "criminal case"), the prosecutor handed over the witness list to Halder (Exhibit "B08"). One of the witnesses the prosecutor intended to produce was Christopher Fenton, who lived at 16032 Squirrel Hollow Lane, Strongsville, OH 44136. The illegal access to Halder's Unix shell account at his ISP (halder@apk.net) on July 13, 2000 came from the telephone number of Janis Kaghazwala (440-572-6047) who lived at 16032 Squirrel Hollow Lane, Strongsville, OH 44136 (Exhibit "V65").
- Exhibit "X05" is a rough sketch of the computer laboratories and surrounding offices at Weatherhead. As of July 2000, Christopher Fenton ("Fenton") was the systems administrator at

Weatherhead (Exhibits "J18/10 & 11" and "J75/8 through 15"), Shawn Miller was a computer lab assistant at Weatherhead (Exhibits "I03/0006/18" and "J04/11"), and they shared adjoining desks in room #420 at Weatherhead. Also, Janis Kaghazwala was employed at the Controller's Office at Case Western Reserve University (Exhibits "J75/24 & 25"). Furthermore, Christopher Fenton and Janis Kaghazwala were boyfriend-girlfriend, and they lived together at 16032 Squirrel Hollow Lane, Strongsville, Ohio 44136 (Exhibits "J76/1" and "J81/7 through 14").

It is abundantly clear from the foregoing that immediately after Halder left the computer lab at Weatherhead on July 13, 2000 at 21:00 hours, Miller called Fenton at home. Then, Fenton took out an account with AltaVista under a fictitious name and a fictitious address. Thereafter, using Kaghazwala's telephone number (440-572-6047), Fenton (whose personality is in perfect order) illegally accessed Halder's Unix shell account at his ISP (halder@apk.net) through NaviPath and 1stUp, and deleted all of the files from Halder's account (Exhibits "M12", "M20", "P55", "P56", "R12", "R55" and "V55").

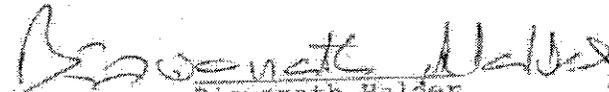
24. 10-Nov-2005 (Thu): The day after Halder solved the cyber-crime, he showed that evidence to defense attorney (in the criminal case) John Luskin knowing full well that attorney Luskin had been working for the prosecution and against the defendant (in the criminal case). Defense attorney Luskin (whose personality is in perfect order) passed that information to his co-conspirators, the prosecuting attorneys immediately. And in turn, the prosecuting attorneys (whose personalities are in perfect order) forwarded that information to their handlers at

Case Western forthwith. Case Western then turned the entire situation around.

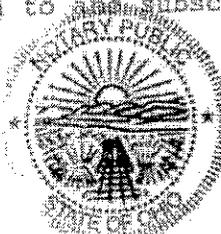
25. 28-Nov-2005 (Mon): At the trial (in the criminal case), the first witness the prosecution produced was Joseph Felo, a forensic pathologist at the county coroner's office. The second witness was none other than the evil man Shawn Miller.
26. 28-Nov-2005 (Mon): Miller testified (under oath) to the effect that immediately after he was deposed (in the civil case) on September 28, 2001, he discovered (?) that it was his friend Christopher Fenton ("Fenton"), the systems administrator at Weatherhead, hacked Halder's Unix shell account at his ISP (halder@apk.net). Miller confronted Fenton, and Fenton did not deny it (Exhibits "J77" through "J85"). Miller shared his discovery with only one individual, Jennifer Schwartz, his attorney (in the civil case) (Exhibit "J83"). And Jennifer Schwartz (whose personality is in perfect order) chose to hide Miller's discovery from the rest of the world (Exhibit "J88").
27. 28-Nov-2005 (Mon): Miller also testified (under oath) to the effect that Janis Kaghazwala is Christopher Fenton's girlfriend, and that Kaghazwala and Fenton lived together at 16032 Squirrel Hollow Lane in Strongsville, Ohio (Exhibit "J75"):

Q Who is Janice [sic] Kaswala [sic]?
A Christopher Fenton's girlfriend.

FURTHER AFFIANT SAYETH NAUGHT.


Biswanath Halder

Sworn to and subscribed before me this 8th day of August, 2007.



JOHN O.
BABAJIDE
NOTARY PUBLIC
STATE OF OHIO
My Commission
Expires
May 31, 2011





GERALD E. FUERST
CUYAHOGA COUNTY CLERK OF COURTS

1200 Ontario Street
 Cleveland, Ohio 44113

*6/24/10
 Wallace*

R E C E I P T

For: COURT OF APPEALS	Receipt Number: 105000106724	
Case Nbr: CA10095324	Receipt Date: 06/24/2010	
Date Filed: 06/24/2010		
BRIAN WALLACE	OTHER	125.00
-vs-		
BISWANATH HALDER		
Judge: NOT APPLICABLE	Total Due	125.00
Received From:	Check Number	1060 125.00
PERCY SQUIRE CO., LLC 00011281	Change	
514 S. HIGH STREET	Total Paid	125.00
COLUMBUS, OH 43215-0000		
DEPUTY CLERK		CLFWP

Judge:

CA 10 095324



Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

File

JOURNAL ENTRY AND OPINION
Nos. 95324 and 95341

**BRIAN WALLACE, ADMINISTRATOR
OF THE ESTATE OF NORMAN WALLACE**

FILED IN CASE NO. 95324
FILED IN CASE NO. 95341

PLAINTIFF-APPELLANT/
CROSS-APPELLEE

NOV 4 3 31
vs.

BISWANATH HALDER, ET AL.

DEFENDANT-APPELLEES/
CROSS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-591169

BEFORE: Keough, J., Gallagher, P.J., and Rocco, J.

RELEASED AND JOURNALIZED: February 24, 2011

"D"

KATHLEEN ANN KEOUGH, J.:

In this consolidated appeal, plaintiff-appellant/cross-appellee, Brian Wallace, Administrator of the Estate of Norman Wallace ("Wallace"), appeals the trial court's decision denying defendant-appellee/cross-appellant, Biswanath Halder's ("Halder"), motion for leave to join third-party defendants. Halder also filed a notice of appeal, which this court determined was a timely-filed cross appeal.

In 2006, Wallace filed a wrongful death complaint alleging that Halder was civilly liable for the death of Norman Wallace. In 2007, Halder filed a motion for leave to join third-party defendants, seeking to join three Case Western Reserve University ("CWRU") employees as third-party defendants in the wrongful death action. He claimed that these individuals hacked into his computer accounts at CWRU and destroyed his cyber property. He further asserted that he would not have committed the violent actions at CWRU in 2003 had these individuals not deleted his computer files. Based on the alleged conduct of these three individuals, Halder asserted a claim of contribution against them for any judgment rendered against him. The trial court denied Halder's motion, finding that he "ha[d] no right of contribution from others for committing the murder of Norman Wallace."

In 2010, following a jury trial, Halder was found civilly liable for the death of Norman Wallace and judgment was rendered in favor of Wallace against Halder in the amount of \$3.8 million dollars.

APPEAL NO. 95341: HALDER'S APPEAL

Although Halder filed a notice of appeal, he failed to file a brief in support. Therefore, Halder's cross-appeal is dismissed pursuant to App.R. 18(C).

Accordingly, Halder's appeal is dismissed.

APPEAL NO. 95324: WALLACE'S APPEAL

In his sole assignment of error, Wallace argues that the trial court erred when it denied Halder's motion for leave to file a third-party complaint and ultimately, determined that Halder had no right of contribution from others for the wrongful death of Norman Wallace.

We note that although Wallace's notice of appeal indicates that he is appealing from the trial court's May 27, 2010 journal entry denying his May 25, 2010 motion to add John Does 6-8 as parties to this action, Wallace does not make any argument in his merit brief addressing this decision. Rather, Wallace's arguments in his sole assignment of error relate only to the trial court's decision denying Halder's 2007 motion for leave to file a third-party complaint and concluding that Halder had no right of contribution.

App.R. 3(D) provides, in pertinent part, that the notice of appeal "shall designate the judgment, order or part thereof appealed from * * *." Wallace's notice of appeal only designates only the trial court's order denying his May 2010 motion as the order or judgment appealed from.

It is axiomatic that the notice of appeal must specify the judgment being appealed. See App.R. 3(D); *State v. Pond*, Cuyahoga App. No. 91061, 2009-Ohio-849, ¶4. Therefore, we lack jurisdiction to consider any assignment of error regarding Halder's 2007 motion and subsequent order denying said motion. See *Slone v. Bd. of Embalmers & Funeral Dirs.* (1997), 123 Ohio App.3d 545, 704 N.E.2d 633; *Parks v. Baltimore & Ohio RR.* (1991), 77 Ohio App.3d 426, 427, 602 N.E.2d 674 (holding that a court of appeals lacks jurisdiction to review a judgment or order that is not designated in the notice of appeal).

Accordingly, Wallace's appeal is dismissed.

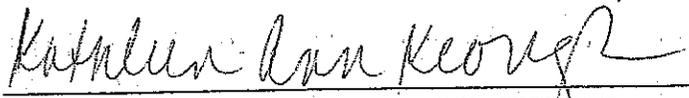
Appeals dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



KATHLEEN ANN KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR

IN THE COMMON PLEAS COURT OF
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE
Administrator of the Estate of
Norman E. Wallace
c/o 2705 Southridge Dr.
Columbus, Ohio 43214

Plaintiff,

vs.

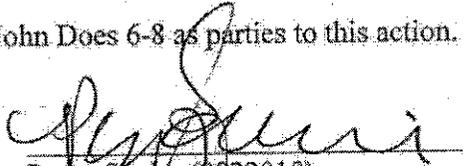
BISWANATH HALDER
MANCI #A501980
Mansfield Correctional Institution
Mansfield, Ohio 44901

Defendant.

Case No. CV 06-591169

NOTICE OF APPEAL

Notice is hereby given that Brian Wallace, Administrator of the Estate of Norman Wallace hereby appeals to the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District from the order entered in this action on May 27, 2010, denying Plaintiff Brian Wallace's 05/25/10 motion to add John Does 6-8 as parties to this action.


Percy Squire (0022010)
Percy Squire Co., LLC
514 S. High St.
Columbus, Ohio 43215
(614) 224-6528 Telephone
(614) 224-6529 Facsimile
Attorney for the Administrator
of the Estate of Norman E. Wallace

"E"

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served June 21, 2010, to
the following via regular mail or email:

Biswanath Hadler, Inmate #A501980
Mansfield Correctional Institution
PO Box 788
Mansfield, Ohio 44901

PS

Percy Squire, Esq. (0022010)

43 copy 3/1/2011 up
Court of Appeals of Ohio, Eighth District

Wallace
Docketed
TK

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

BRIAN WALLACE, ADMIN.

Appellant

COA NO.
95324
95341

LOWER COURT NO.
CP CV-591169
CP CV-591169

COMMON PLEAS COURT

-vs-

BISWANATH HALDER, ET AL.

Appellee

MOTION NO. 442361

RECEIVED FOR FILING

MAR 14 2011

Date 03/14/11

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY CP DEP.

Journal Entry

MOTION BY APPELLANT/CROSS APPELLEE, BRIAN WALLACE, ADMINISTRATOR OF THE ESTATE OF NORMAN WALLACE, FOR RECONSIDERATION IS DENIED.

APPELLANT ARGUES THAT THE "NOTICE OF APPEAL INDICATED THAT IT WAS FROM THE MAY 27, 2010 FINAL JUDGMENT INTO WHICH ALL INTERLOCUTORY ORDERS WERE MERGED." TO THE CONTRARY, THE NOTICE OF APPEAL INDICATED THAT THE APPEAL WAS TAKEN FROM THE MAY 27, 2010 JOURNAL ENTRY DENYING APPELLANT'S MAY 25, 2010 MOTION TO ADD JOHN DOES 6-8, WHICH WAS THE JOURNAL ENTRY ATTACHED TO THE NOTICE OF APPEAL.

FURTHERMORE, APPELLANT MADE NO ARGUMENT ON APPEAL THAT THE TRIAL COURT ERRED IN DENYING HIS MAY 25, 2010 MOTION. INSTEAD, APPELLANT'S ARGUMENTS CONCERNED APPELLEE/CROSS-APPELLANT, BISWANATH HALDER'S 2007 MOTION FOR LEAVE TO JOIN THIRD-PARTY DEFENDANTS.

FINALLY, CONTRARY TO APPELLANT'S ASSERTION IN HIS MOTION FOR RECONSIDERATION THAT THE TWO MOTIONS TO ADD PARTIES WERE "ESSENTIALLY" THE SAME AND SOUGHT TO JOIN THE SAME PERSONS, WE FIND THAT ONLY ONE PARTY WAS SIMILAR TO BOTH HALDER'S AND APPELLANT'S MOTION.

ACCORDINGLY, APPELLANT'S MOTION FOR RECONSIDERATION IS DENIED.

Presiding Judge SEAN C. GALLAGHER,
Concurs

Judge KENNETH A. ROCCO, Concurs

Kathleen Ann Keough
Judge KATHLEEN ANN KEOUGH

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EXHIBIT " 1 "