

IN THE SUPREME COURT OF OHIO

INNOVATIVE TECHNOLOGIES CORPORATION,

Plaintiff-Appellee,

v.

ADVANCED MANAGEMENT TECHNOLOGY, INC.

Defendant-Appellant.

CASE NO. 11-2074

Appeal from the Montgomery County Court of Appeals, Second Appellate District

Court of Appeals Case No. CA 23819

APPELLEE INNOVATIVE TECHNOLOGIES CORPORATION'S MEMORANDUM OPPOSING AMTI'S MEMORANDUM IN SUPPORT OF JURISDICTION

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**THIS CASE NEITHER INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION
NOR IS OF PUBLIC OR GREAT GENERAL INTEREST**

This case does not involve a substantial constitutional question or issues of public or great general interest. The judgment in this case resulted from the application of well-settled law to disputed facts. In an effort to change a result of importance only to itself, AMTI asks this Court to re-weigh evidence pertaining to causation and damages and substitute its judgment for the jury, the trial court, and the court of appeals. Such re-evaluation of evidence is not a function of this Court.

AMTI now appeals this case from the Second District Court of Appeals, where, in a forty-six-page decision upholding the trial court's remitted verdict against AMTI, the court of appeals correctly applied longstanding and established Ohio and Federal law to determine that the remitted verdict was supported by substantial evidence. AMTI asks this Court to reverse the court of appeals' correct application of law on causation and its finding that ITC presented "ample" and "substantial" evidence to demonstrate that "but for" AMTI's year-long conspiracy of unfair competition, ITC would have won the renewal of the Mobility SPO contract. (Decision¹ at 13, 19, 22.) AMTI also takes issue with the court of appeals' conclusion that ITC's punitive damages award was appropriate and not excessive, despite AMTI's "particularly egregious" actions. (*Id.* at 35-37.) Finally, AMTI challenges the court of appeals' conclusion that the trial court properly remitted the jury award based on a careful review of the voluminous record. (*Id.* at 23-32.)

In considering whether to exercise its discretionary jurisdiction, this Court has held that cases involving questions of great general interest must be distinguished from cases merely

¹ Multiple cites will be made to the Second District Court of Appeals' Decision in Case No. 23818, which was filed October 28, 2011, and which is on appeal in this case (hereinafter cited as the "Decision").

involving “questions of interest primarily to the parties.” *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960). AMTI does not ask this Court to make a ruling that would benefit multiple Ohio litigants, but only a ruling that would benefit AMTI. Therefore, this case does not warrant this Court’s review.

STATEMENT OF THE CASE AND FACTS

ITC is a small Dayton, Ohio government contractor that provides onsite administrative services to Wright Patterson Air Force Base (“WPAFB”). (Decision, at 2.) ITC supplies the Air Force with employees and is paid an hourly rate based on the skills, experience, and education of each employee. (Canter 12/11/07, Tr. 102:12-15.) To protect these valuable assets, ITC requires its employees to sign employment contracts which prohibit the employees from aiding ITC’s competitors or competing with ITC for a period after employment. (Decision, at 3.)

In the summer of 2000, ITC was under contract to supply employees to support the Mobility SPO (a cargo plane support organization) at WPAFB. (*Id.*) The Mobility SPO contract was ITC’s largest contract, representing one-third of its business. (*Id.* at 35.) ITC had performed the contract for over six years with repeated renewals. (*Id.* at 3; Canter 12/11/07, Tr. 100:11-24.) Given the length of time that ITC had performed the Mobility SPO contract, the Air Force was required to competitively bid, or re-compete, the contract. (Earehart 12/12/07, Tr. 676:10-23.)

An incumbent contractor has a significant advantage in any re-compete of a contract. (Decision, at 4, 13, 16-17, 19, 22.) Often, this “incumbent advantage” is so strong that other companies choose not to bid against an incumbent. (*See id.* at 16.) Even AMTI acknowledged that when an incumbent is performing well, it often does not submit a bid because the incumbent almost always wins. (*Id.* at 16-17.) For the re-compete of the Mobility SPO contract, the primary factor considered by the Air Force in selecting the winning bid was not the lowest price,

but rather the “best value[.]” and the Air Force made it clear that the “best value” was to keep ITC’s incumbent employees in their positions performing the contract. (*Id.*; Canter 12/12/07, Tr. 485:13-486:15; Earehart 12/12/07, Tr. 656:3-25; Whitcan 12/13/07, Tr. 810:23-811:6.)

While ITC was preparing its bid for the Mobility SPO contract, three of its employees secretly formed a new company (“KTT”) to bid against ITC. (Decision, at 4.) The leader of these unfaithful employees was James Silcott, ITC’s on-site head of the Mobility SPO workforce. (*Id.* at 3-4.) Mr. Silcott knew that the Air Force wanted to keep ITC’s incumbent employees, so he intended to support KTT’s bid by promising to supply the Air Force with ITC’s incumbent employees. (*Id.* at 4; Silcott 12/12/07, Tr. 551:8-12.) But KTT lacked the necessary government credentials to bid on the Mobility SPO contract on its own. (Decision, at 4.) So Mr. Silcott approached Defendant, AMTI, a large, publicly held Washington, D.C.-based government contracting company, for help with obtaining ITC’s incumbent employees and the Mobility SPO contract from ITC. (*Id.*)

AMTI and KTT signed a teaming agreement and began what became a yearlong conspiracy to acquire ITC’s employees and use them to win the Mobility SPO contract. (*Id.*) Under their plan, AMTI would bid as the prime contractor, and KTT would be its subcontractor. (*Id.*) Their plan changed, however, when Mr. Silcott succeeded in improperly delaying the “Request for Proposal” or “RFP” for the Mobility SPO contract until May 2001 in order for KTT to obtain the proper credentials to bid directly on the contract. (Silcott 12/17/07, Tr. 1148:15-1149:3, 1153:20-1154:13.) AMTI continued to help KTT with the intention that AMTI would be a subcontractor working under KTT. (Decision, at 4.)

In May 2001, the RFP was issued to four companies, but only two companies submitted bids—ITC and KTT. (*Id.* at 5.) Both companies promised to supply the Air Force with ITC’s

incumbent workforce. (*Id.*) ITC learned of Mr. Silcott's actions and promptly obtained an injunction which enjoined KTT from competing with ITC. (*Id.*) With KTT barred from the competition, ITC was the sole bidder remaining. (*Id.*) The person in charge of picking the winner for the May 2001 RFP would have awarded the contract to ITC, but the Air Force decided that KTT's bid had tainted the bidding process, and the contract was extended until a new RFP could be issued. (Decision, at 5-6; Earehart 12/12/07, Tr. 661:9-12, 701:10-15.)

With KTT now enjoined from competing for the Mobility SPO contract, AMTI and KTT's conspiracy changed again—AMTI went back to being the prime contractor with KTT as subcontractor, and AMTI began preparing its bid again. (*Id.* at 6.) With KTT's help, AMTI secretly met with ITC employees and, despite their contractual and fiduciary employment restrictions, obtained their pledges to leave ITC and work for AMTI upon AMTI winning the bid. (*Id.*) AMTI also gained access through the incumbent employees to trade secret financial information belonging to ITC that AMTI used in its bid. (*Id.*) In addition, Mr. Silcott directed AMTI to an Air Force officer who had overseen the Mobility SPO, and that officer illegally provided AMTI with a complete list of ITC employees' salaries that AMTI used to make its bid. (Silcott 12/12/07, Tr. 576:7-10; Whitican 12/19/07, Tr. 1569:16-22, 1565:18-1566:9, 12/14/07, Tr. 844:23-853:1; Allen 12/18/07, Tr. 1335:17-1336:13.)

ITC's employment contracts forbid ITC employees from allowing competitors to use their resumes, so AMTI also improperly influenced Air Force personnel to drop that requirement for the August 2011 RFP. (Decision, at 3, 16.) Without the requirement of attaching resumes, three other companies besides AMTI bid against ITC for the contract. (*Id.*) AMTI made its bid by using the stolen ITC trade secret financial and employee information and unlawfully

promising the return of ITC's incumbent employees. (*Id.* at 6, 17.) AMTI was awarded the contract, and ITC's incumbent employees immediately left ITC to work for AMTI. (*Id.* at 6.)

Before trial, AMTI filed, and lost, two motions for summary judgment asserting that ITC could not prove that AMTI had proximately caused ITC to lose the Mobility SPO contract. (*Id.* at 7-8.) Twice during trial, AMTI unsuccessfully moved for directed verdict based on failure to prove causation. (*Id.*) The jury rendered a verdict against AMTI for misappropriation of ITC's trade secrets, tortious interference, and civil conspiracy with KTT and the individual defendants, and awarded ITC compensatory damages, punitive damages, and attorneys' fees. (*Id.* at 8-9.)

After the trial, AMTI filed a motion for JNOV, a new trial, and remittitur. (*Id.* at 9.) AMTI asserted, again, that ITC had not proven causation, and that the compensatory damages and punitive damages were excessive. The trial court found that ITC had proven causation, so it denied AMTI's motion for JNOV and a new trial, but the court did remit the jury's compensatory damages award. (*Id.*) The court also found the punitive damages award to be reasonable but remitted it to maintain the same ratio of compensatory damages to punitive damages as set by the jury. (*Id.*) ITC accepted the remittitur, resulting in a compensatory damages award of \$1,970,599.44 and a punitive damages award of \$5,832,974.34. The trial court awarded ITC attorneys' fees and costs in the amount of \$2,941,502. (*Id.*) A final judgment in the amount of \$10,745,076.09 was entered on December 19, 2009. AMTI appealed, alleging multiple errors by the trial court, including three assignments of error relating to causation alone. Applying clearly-delineated and longstanding Ohio law to each of AMTI's arguments, the Second District upheld the trial court's remitted verdict in its entirety. AMTI now attempts to appeal that decision.

ARGUMENTS AGAINST GRANTING JURISDICTION

AMTI's First Proposition of Law—Causation

This proposition of law should not be accepted for three reasons. First, AMTI seeks to reverse time-tested precedent and establish a separate bright-line rule for causation in the government contracting context, with no actual legal support for this limitation on the proof of causation. Second, AMTI does not even make an argument in favor of its proposition of law and instead asks the Court to re-weigh the evidence in this case. Lastly, AMTI makes a factual argument that is *entirely* premised on the testimony of a discredited witness and ignores contrary evidence in the record. With no legal support and disputed facts, there is no question of public or great general interest for this Court to accept.

First, Ohio law on causation is clear. Proximate cause is “generally established where an original act is wrongful or negligent and, in a natural and continuous sequence, produces a result [that] would not have taken place without the act[.]” (Decision, at 12 (citation omitted).) As a consequence, proximate cause is a question of fact to be determined by the jury. (*Id.*)

Without legal authority, AMTI claims that the only way a plaintiff/government contractor can prove that a defendant caused it to lose a government contract is to show that it was the runner-up bidder for the contract. AMTI requests that this bright-line rule apply in every competitive bidding situation, regardless of the facts or circumstances underlying the plaintiff's claim. The proposed rule is made up of whole cloth and would often create nonsensical and unjust results. Many bids result in a winner being picked without a ranking of the losers. AMTI's rule would require a court to dismiss any claim arising from a bid process that simply picked a winner without ranking the losers, even upon ample proof that the claimant was the next strongest losing bidder.

Second, AMTI does not really make a legal argument for this proposition of law but instead asks this Court to re-weigh all of the evidence pertaining to causation, re-evaluate the credibility of the witnesses, and arrive at a different conclusion than did the jury, the trial court, and the court of appeals. The court of appeals has already given a fair review to this claimed error and rejected it. A second review of this type of claimed error is only important to the losing party and is not a matter of great general interest.

The court of appeals, applying the but-for causation test to the facts of this case, found that ITC provided not only “sufficient,” but “substantial” and “ample” evidence to demonstrate that but-for AMTI’s actions, ITC would have been awarded the Mobility SPO contract.

(Decision, at 13, 19, 22.) Specifically, ITC demonstrated that:

- ITC would have been the only bidder for the May 2001 bid, absent the tortious conduct of AMTI and KTT and “would have been awarded the Mobility SPO contract[.]” (*Id.* at 14.)
- Absent incumbent employees, a contractor did not stand a chance of winning the Mobility SPO contract. (*Id.* at 16.)
- By taking ITC’s employees, AMTI was the only bidder in addition to ITC that promised the incumbent workforce. (*See id.* at 15, 17, 22.)
- If AMTI would not have misappropriated ITC’s employees, ITC would have been “the only contractor that could legally state that it could provide the incumbent work force in its bid[.]” (*Id.* at 22.)

Upon such evidence, the court of appeals concluded, “a reasonable person could find by a preponderance of the evidence that AMTI proximately caused ITC to lose the Mobility SPO contract in August of 2001 by promising the immediate availability of ITC’s incumbent employees if it was awarded the Mobility SPO contract.” (*Id.* at 17.) Ultimately, the court of appeals applied the correct but-for causation test, and there was ample evidence to support the

court's conclusions. This Court should not now re-weigh the evidence just because AMTI disagrees with those conclusions.

Finally, AMTI's entire proposition hinges on the assertion that the Air Force ranked the Mobility SPO bidders and that ITC came in fourth. But the record does not support this contention. As the court of appeals pointed out, AMTI's sole evidence that a ranking even existed was testimony from Michael Karraker, and his testimony was "undermined by the fact that he submitted two sworn affidavits which contain conflicting and contradictory averments." (*Id.* at 14.) Mr. Karraker was further impeached when he admitted that the name of one of the bidders in his "ranking" had been supplied to him by AMTI's counsel just before he testified. (Karraker 12/18/07, Tr. 1451:1-1452:11.) In stark contrast to this conflicting and impeached testimony, the only person that really counted—the person in charge of picking the August Mobility SPO contract winner—plainly testified that he did *not* rank the bidders. (Dillman 6/19/06, Depo. 19:1-20:20 (played at trial).)

AMTI also claims that, "Regardless whether incumbent employees possibly enhanced AMTI's bid, ITC would never have won the contract regardless of AMTI's conduct." Again, only Mr. Karraker testified that it was not important to the Air Force to retain ITC's incumbent employees. And this testimony was directly contradicted by the testimony of *every other witness*, including AMTI's own Dayton Operations Manager. (Decision, at 16-17.) AMTI's Manager testified that Mr. Karraker told him that providing ITC incumbent employees was an essential prerequisite to receiving a favorable evaluation and that AMTI won the contract only because it had promised to provide ITC's incumbent employees. (*Id.* at 17.)

AMTI is now on its seventh attempt to convince a court that ITC did not establish causation. All previous attempts, including five motions and its one appeal of right, have failed.

The jury and the courts below properly applied the well-established law of causation to the facts in the record before the jury. Even if this Court granted AMTI's request, accepted jurisdiction, and re-weighed all of the evidence, the evidence unequivocally proves causation, and this Court would arrive at the same conclusion as did the trial court, the jury, and the court of appeals. AMTI's first proposition of law should not be accepted.

AMTI's Second Proposition of Law—Punitive Damages

In its second proposition of law, AMTI again asks this Court to reverse longstanding precedent and adopt another bright-line rule—that an award of punitive damages cannot exceed compensatory damages—a proposition that this Court, all other Ohio courts, and the U.S. Supreme Court have refused to adopt on numerous occasions. This proposition of law should not be accepted for two reasons. First, there is no determinative authority cited for this proposition, and the case law cited by AMTI is all premised on the specific facts of the cases at issue, not the legal principle AMTI is espousing. Second, there is no need for this additional limitation on punitive damages.

Ohio law on punitive damages is clear. Ohio courts are to apply the U.S. Supreme Court's three-prong analysis set forth by *BMW of N. Am. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) to the damages award and factual circumstances of each specific case to determine if a punitive damages award is "grossly excessive[.]" *Barnes v. Univ. Hosps. Of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶¶ 31, 40. This evaluation is to be done on a case-by-case basis. *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, ¶ 188. The Supreme Court of Ohio, like the U.S. Supreme Court, "has consistently rejected the notion of a bright-line mathematical formula for assessing the reasonableness of punitive damages awards." *Barnes*, at ¶ 34; see *State Farm Mut.*

Auto Ins. Co. v. Campbell, 538 U.S. 408, 425, 123 S.Ct. 1513, 155 L.Ed. 585 (2003) (“We decline again to impose a bright-line ratio which a punitive damages award cannot exceed.”)

In its detailed decision, the court of appeals applied the *BMW* three-pronged analysis to the facts of this case and found that the punitive damages awarded to ITC did not exceed constitutional boundaries. (Decision, at 33-40.) Prong 1, the degree of reprehensibility of the defendant’s misconduct, is “the most important indicium of the reasonableness of a punitive damages award.” *Barnes*, at ¶ 33. The court of appeals held that, in this case, “[i]t is in the area of reprehensibility that AMTI fares most poorly,” noting that four out of the five factors used in measuring reprehensibility exist. (Decision, at 34, 37.) The court of appeals found that AMTI has “a history of engaging in unfair and deceptive business practices dating back to 1998” and “still has a policy of obtaining proprietary information regarding competitors’ incumbent employees in order to gain an unfair advantage in the bidding process for government contracts.” (*Id.* at 35, 37.)

Prong 2 is the disparity between the harm suffered by the plaintiff and the punitive damages award. *Barnes*, at ¶ 34. Here, AMTI asks the Court to reverse decades of precedent and establish a bright-line 1:1 ratio. But truly, this case demonstrates why a punitive damages award should be evaluated on a case-by-case basis. As the court of appeals noted, AMTI’s actions “were particularly egregious” because AMTI had continued with its tortious conduct against ITC after being found liable in a separate Virginia lawsuit for interfering with another company’s incumbent employees. (*Id.* at 36-37.) As the court of appeals noted, AMTI never acknowledged that its conduct was illegal, nor did it acknowledge that it would refrain from such conduct in the future, and in fact, still had a policy of obtaining proprietary information regarding incumbent employees from competitors to obtain an advantage in bidding for

government contracts. (*Id.* at 36, 37, 40.) Therefore, not only did AMTI go forward with its plan to steal the Mobility SPO contract from ITC knowing that its actions were illegal, but it also explicitly told the jury and the court that it planned to continue the same conduct in the future.

Despite AMTI's claims, *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S.Ct. 2605, 171 L.Ed.2d 570 (2008), does not support AMTI's proposition that the U.S. Supreme Court is moving toward a bright-line 1:1 ratio. In *Exxon*, the Supreme Court expressly limited its consideration to maritime law, specifically stated that it was *not* evaluating the award for due process considerations, and again acknowledged that it has "consistently rejected the notion that the constitutional line is marked by simple mathematical formula[.]" *Id.* at 501-03.

AMTI cites to a New Mexico federal district court ruling, *Guidance Endonotics, LLC v. Dentsply Int'l, Inc.*, 791 F.Supp.2d 1026, 1038 (D.N.M.2011), for the proposition that *Exxon* signals the Supreme Court's intention to adopt a bright-line ratio in all cases, not just maritime cases. But that contention is not supported by other district courts, federal circuit courts, state supreme courts, and state appellate courts. *See, e.g., American Family Mutual Ins. Co. v. Miell*, 569 F.Supp.2d 841, 859 (N.D.Iowa 2008) (holding that the Supreme Court in *Exxon* "made it clear . . . that its inquiry involved reviewing a jury award for conformity with maritime law, rather than the outer limit allowed by due process. That is, the Court did *not* conclude that the Constitution prohibits a punitive damages award greater than the amount awarded for compensatory damages") (emphasis sic); *St. Paul Fire and Marine Ins. Co. v. Labuzan*, 2010 WL 1065958, at *5 (S.D.Tex.2010) (same); *Myers v. Central Florida Investments, Inc.*, 592 F.3d 1201, 1222 (11th Cir. 2010) (same); *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, 694 S.E.2d 815, n.82 (W.Va.2010) (same); *Rosander v. Nightrunners Transport, Ltd.*, 147 Wash. App. 392, ¶ 35 (Wash.App.2008) (same). Many cases hold that *Exxon* is only applicable

in maritime cases and therefore, it does not indicate that the Supreme Court intends to impose a bright-line 1:1 ratio for punitive to compensatory damages.

AMTI cites a number of other cases which allegedly support its claim that a punitive damages award in excess of a 1:1 ratio is unconstitutional. But none of those cases contain such a holding, and they are easily distinguished. First, as the court of appeals noted, AMTI incorrectly asserts that the damages ratio upheld in *Clark* was 1:1, when in fact, it was 2:1. (Decision, at 38, citing *Clark v. Chrysler*, 436 F.3d 594, 608 (6th Cir. 2006).) Also, in *Clark*, only one of the five reprehensibility factors weighed in favor of a large punitive damages award as opposed to the instant case, where four out of five of the factors exist. (Decision, at 39, citing *Clark*, at 605.) In *Bach*, only two of the five reprehensibility factors existed, and the absence of the other factors “substantially undercut [plaintiff’s] attempts to justify the size of the punitive damages.” (Decision, at 39, citing *Bach v. First Union Natl. Bank*, 486 F.3d 150, 155 (6th Cir. 2007).)

Similarly, in *Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 442 (6th Cir. 2009), the court reasoned that the conduct of a few of the defendant’s executives was “not . . . so reprehensible as to justify a high punitive damages award,” especially given the plaintiff’s substantial financial status. But unlike *Morgan*, AMTI’s reprehensible conduct was determined “particularly egregious” by the court of appeals based on a company policy dating back to 1998 that AMTI continued even after having been sanctioned with punitive damages by another jury in an earlier case and even after ITC brought its claims in this case. (Decision, at 36-37, 40.) Additionally, unlike *Morgan*, AMTI’s actions caused ITC to lose one-third of its business and twenty-two employees, rendering it financially vulnerable. (Decision, at 35.) Also contrary to AMTI’s assertion, the Ohio appellate court in *Burns v. Prudential Securities*, 167 Ohio App.3d 809, 2006-Ohio-3550, 857 N.E.2d 621, ¶¶ 119, 123 (3rd Dist.), explicitly held that, “Courts have

. . . consistently rejected the idea that the constitutional line can be marked by a mathematical formula even when the formula compares actual and potential damages to the punitive award,” and only three of the five reprehensibility factors existed. The cases cited by AMTI show that the current rule is quite sufficient to allow courts to reduce constitutionally unreasonable punitive damages awards when the facts merit such reduction.

Prong 3 requires a court to compare the punitive damages award in this case to the punitive damages award in comparable cases and civil penalties. *Barnes*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, at ¶ 36. The court of appeals noted that, in a recent case, it had upheld an 8:1 punitive to compensatory damages ratio after concluding that the large punitive damages award was appropriate to deter the defendant from future similar conduct. (Decision, at 39-40.) Another Ohio appellate court recently upheld large punitive damages to compensatory damages ratios ranging from 2.5:1 to 3.5:1 in a business tort case involving economic damages. *Am. Chem. Soc. v. Leadscope, Inc.*, 10th Dist. No. 08AP-1026, 2010 WL 2396544, at ¶¶ 76, 82 (June 15, 2010) (upholding a jury verdict awarding \$26.5 million plus attorneys’ fees for tortious interference, unfair competition, and defamation).

Additionally, AMTI was found liable for misappropriation of trade secrets, which under the Ohio Uniform Trade Secrets Act may result in a punitive damages award that is three times the amount of compensatory damages. R.C. 1333.63(B). Likewise, under Federal law, theft of trade secrets may be punished by a fine not to exceed \$5,000,000. 18 U.S.C. 1832, 1834. And as AMTI, itself, noted, R.C. 2315.21, which is not retroactive and does not apply to this case, even allows for a 2:1 ratio in tort cases. A reversal of this Court’s precedent and the establishment of a bright-line 1:1 ratio would effectively render both the Ohio Uniform Trade

Secrets Act and R.C. 2315.21 unconstitutional in a case where no such direct statutory attack was raised, as both allow for greater than a 1:1 ratio.

Of course, R.C. 2315.21 became effective in 2005. This case may be the only case still in the courts where R.C. 2315.21 will not be applied. As such, this case and the proposition of law suggested by AMTI does not present a substantial constitutional question or a question of public or great general interest, and jurisdiction over it should be declined.

AMTI's Third Proposition of Law—Remittitur of Damages

In its third proposition of law, AMTI does not propose a new proposition of law, but instead, merely seeks what it sought from the court of appeals—a re-opening of the judgment as a result of a factual re-weighing of the evidence presented at trial, the jury interrogatories, and the jury verdict.

Citing *no* case law in support of its proposition, AMTI asserts that the jury made serious errors in calculating damages, and that the trial court should have ordered a new trial instead of remittitur. Without a legal controversy, it is clear that AMTI is only seeking to have the Court perform error correction. Even if error correction was needed (which it is not), that task is not an appropriate reason for this Court to exercise discretionary jurisdiction.

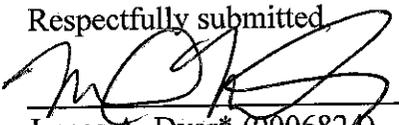
The so-called factual errors that AMTI is seeking to fix are, in fact, amply supported by the evidence at trial. (Decision, at 13, 19, 22.) As it did throughout its decision, the court of appeals correctly applied longstanding and established Ohio law on remittitur to the circumstances of this case and found that the trial court's remittitur was appropriate. The court of appeals, applying the correct four-part test for allowing a court to grant a remittitur, found that "the trial court was within its discretion to remit the amount of the jury award to the damages supported by the weight of the evidence . . . , and the granting of a new trial was not appropriate

in this case.” (*Id.* at 24.) The court of appeals used nine pages of its decision to address each of AMTI’s arguments and delineate, in detail, the reasons why the trial court’s remittitur was not an abuse of discretion. (*Id.* at 23-32.) AMTI cites no case law to contradict the court’s analysis, much less describes any issue of great general interest.

The court of appeals specifically found that the jury instructions as a whole, the interrogatories, and the evidence supported the jury’s conclusion that a conspiracy existed between AMTI and KTT. (*Id.* at 29-32.) AMTI’s third proposition, even if accepted, would not change the outcome of this case. Jurisdiction should not be accepted over this proposition.

CONCLUSION

AMTI does not ask this Court to make a ruling that would benefit Ohio litigants as a whole, but only a ruling that would affect AMTI. Boiled down, AMTI is requesting that this Court accept jurisdiction merely to re-evaluate the evidence. AMTI’s propositions of law neither present a substantial constitutional question nor an issue of public or great general interest. Thus, this Court should not accept jurisdiction of AMTI’s appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Memorandum Opposing AMTI's Memorandum in Support of Jurisdiction was served upon the following by electronic mail and FedEx overnight delivery this 10th day of January, 2012:

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