

ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NO. 12-0797

Appeal from Court of Appeals  
Ninth Judicial District  
Summit County, Ohio  
Case No. CA-25602

LARRY J. MORETZ, et al.  
Plaintiff-Appellees

v.

KAMEL MUAKKASSA, M.D.  
Defendant-Appellant

FILED  
SEP 19 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

**PLAINTIFF-APPELLEES' MOTION TO DISMISS DEFENDANT-APPEALANT'S  
APPEAL, OR IN THE ALTERNATIVE, STRIKE DEFENDANT-APPEALANT'S  
MOTION FOR RECONSIDERATION AND NAME ROLA MUAKKASSA,  
FIDUCIARY OF THE ESTATE OF KAMEL MUAKKASSA AS THE REAL  
PARTY IN INTEREST IN THIS CASE**

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**PLAINTIFF-APPELLEES' MOTION TO DISMISS DEFENDANT-  
APPEALANT'S APPEAL, OR IN THE ALTERNATIVE, STRIKE  
DEFENDANT-APPEALANT'S MOTION FOR RECONSIDERATION AND  
NAME ROLA MUAKKASSA, FIDUCIARY OF THE ESTATE OF KAMEL  
MUAKKASSA AS THE REAL PARTY IN INTEREST IN THIS CASE**

This discretionary appeal was filed on May 7, 2012 by Appellant Kamel Muakkassa, M.D. Appellant Kamel Muakkassa, M.D. died on May 13, 2012. (See Certificate of Death attached herein as Exhibit 1). Kamel Muakkassa, M.D.'s estate was opened on May 15, 2012. The estate is pending in Summit County Probate Court bearing case Number 2012 ES 00546. On July 25, 2012, the Supreme Court accepted the appeal on proposition of law number IV. Propositions of law number I, II, and III were denied jurisdiction by this Court. Defendant-appellant Kamel Muakkassa, M.D., through his counsel, filed a motion for reconsideration on August 6, 2012.

On May 13, 2012, the attorney client relationship between Kamel Muakkassa, M.D. and Roetzel & Andress ended due to the death of the Kamel Muakkassa. The real party in interest in this appeal is Rola Muakkassa, fiduciary of the estate of Kamel Muakkassa. "The death of the client dissolves the relationship of attorney and client." *England v. Barstow* 30 Ohio App.2d 42 (Ohio APP 4<sup>th</sup> Dist). Since the attorney client relationship ended on May 13, 2012, Roetzel & Andress had no authority to represent defendant-appellant Kamel Muakkassa, M.D. Therefore, we request that this Honorable Court dismiss this discretionary appeal in its entirety.

In the alternative, this Honorable Court should strike the defendant-appellant Kamel Muakkassa, M.D.'s motion for reconsideration and this Court should name Rola Muakkassa, fiduciary of the estate of Kamel Muakkassa as the real party in interest in this

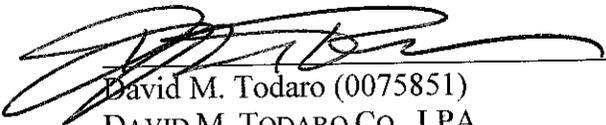
case. Roetzel & Andress had no authority to sign and file a motion for reconsideration in this Court on behalf of defendant-appellant Kamel Muakkassa, M.D. who died over four months ago. Consequently, the motion for reconsideration filed on August 6, 2012 is a nullity.

### CONCLUSION

For the reasons discussed above, this Honorable Court should dismiss this discretionary appeal in its entirety, or in the alternative, strike the defendant-appellant Kamel Muakkassa, M.D.'s motion for reconsideration and name Rola Muakkassa, fiduciary of the estate of Kamel Muakkassa, as the real party in interest in this case.

Respectfully submitted,

  
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*Attorneys for Appellees Larry J. Moretz and  
Nicole Moretz*

**CERTIFICATE OF SERVICE**

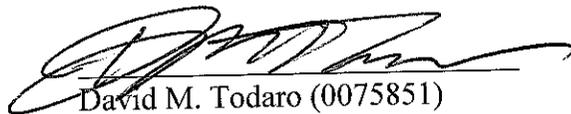
I certify that I served a copy of the foregoing *PLAINTIFF-APPELLEES' MOTION TO DISMISS DEFENDANT-APPEALANT'S APPEAL, OR IN THE ALTERNATIVE, STRIKE DEFENDANT-APPEALANT'S MOTION FOR RECONSIDERATION AND NAME ROLA MUAKKASSA, FIDUCIARY OF THE ESTATE OF KAMEL MUAKKASSA AS THE REAL PARTY IN INTEREST IN THIS CASE* by first class U.S. mail, postage prepaid, this 18<sup>th</sup> day of September, 2012 upon the following counsel.

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Fiduciary of the Estate of  
Kamel Muakkassa

Rola Muakkassa  
552 Timber Creek Drive  
Akron, Ohio 44333  
Fiduciary of the Estate of  
Kamel Muakkassa

  
David M. Todaro (0075851)

CERTIFICATE OF DEATH

Registrar's No. 2012-004815

Type of print in permanent blue or black ink

1. Decedent's Legal Name (include AKA's if any in first Middle, LAST, suffix) <b>KAMEL F MUAKKASSA</b>		2. Sex <b>Male</b>	3. Date of Death (Mo/Day/Year) <b>May 13, 2012</b>
4. Social Security Number <b>5731</b>	5a. Age (Years) <b>62</b>	5b. Under 1 Year Months <b>0</b> Days <b>0</b>	5c. Under 1 day Hours <b>0</b> Minutes <b>0</b>
6. Date of Birth (Mo/Day/Year) <b>September 29, 1949</b>		7. Birthplace (City and State or Foreign Country) <b>Lebanon</b>	
8a. Residence State <b>OHIO</b>		8b. County <b>SUMMIT</b>	
8c. City or Town <b>AKRON</b>		8d. Zipcode <b>44333</b>	8e. Inside City Limits? <b>Yes</b>
9. Siret and Number <b>552 Timber Creek</b>		10. Marital Status at Time of Death <b>Married</b>	
11. Surviving Spouse's Name (if wife, give name prior to first marriage) <b>ROLA MANSOUR</b>		12. Decedent's Education <b>MASTERS DEGREE (E.G. MA, MS.)</b>	
13. Decedent of Hispanic Origin <b>No</b>		14. Decedent's Race <b>White</b>	
15. Father's Name <b>FUAD MUAKKASSA</b>		16. Mother's Name (prior to first marriage) <b>LEILA HAMADEH</b>	
17a. Informant's Name <b>ROLA MUAKKASSA</b>		17b. Relationship to Decedent <b>Wife</b>	
17c. Mailing Address (Street and Number, City, State, Zip Code) <b>552 Timber Creek Dr AKRON, OHIO 44333</b>		18a. Place of Death <b>Hospital - Inpatient</b>	
18b. Facility Name (if not institution, give street & number) <b>CLEVELAND CLINIC FOUNDATION H18</b>		18c. City or Town, State and Zip Code <b>CLEVELAND, OH 44195</b>	
18d. County of Death <b>CUYAHOGA</b>		19. Signature of Funeral Home Agent <i>[Signature]</i>	
20. License Number (of licensee) <b>007501</b>		21. Name and Complete Address of Funeral Facility <b>CATAVOLOS FUNERAL HOME 3653 WEST MARKET ST. FAIRLAWN, OH 44333</b>	
22a. Method of Disposition <b>Removal from State</b>		22b. Date of Disposition <b>May 18, 2012</b>	
22c. Place of Disposition (Name of Cemetery, Crematory, or other place) <b>Lebanon Cemetery</b>		22d. Location (City/Town and State) <b>ZZ</b>	
23. Registrar's Signature <i>[Signature]</i>		24. Date Filed <b>MAY 15 2012</b>	
25a. Name of Person Issuing Burial Permit <b>BLECH MORRY</b>		25b. District No. <b>1800</b>	
25c. Date Burial Permit Issued <b>05/14/2012</b>		26a. Certifier (Check only one) <input checked="" type="checkbox"/> Certifying Physician To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Coroner On the basis of examination (either post-mortem, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.	
26b. Time of Death <b>12 AM</b>		26c. Date Pronounced Dead (Mo/Day/Year) <b>5-13-12</b>	
26d. Was case referred to coroner? <b>No</b>		26e. License number <b>35.053122</b>	
26f. Date Signed <b>5-15-12</b>		27. Name (Last, First, Middle) and Address of Person who Completed Cause of Death <b>NEMER, WALEED FAWZI, 908 E Waterloo Rd AKRON, OH 44301</b>	
28. PART I. Enter the disease, injury, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Type or print in permanent blue or black ink.		Approximate Interval Between Onset and Death	
Immediate Cause (Final disease or condition leading to death) <b>SEPTIC SHOCK</b>		<b>3 DAYS</b>	
Contributing Cause (Disease, injury, or complication leading to immediate cause) <b>PANCREATIC CANCER</b>		<b>1 1/2 YRS.</b>	
Underlying Cause (Disease or injury that initiated events resulting in a death) <b>HEPATIC and LYMPHATIC METASTASIS</b>			
Other significant conditions contributing to death, but not resulting in the underlying cause given in Part I. <b>DIABETUS</b>			
29. Was an Autopsy Performed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		30. Were Autopsy Findings Available Prior To Completion Of Cause of Death? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable	
31. Manner of Death <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Suicide		32. If Female, Pregnancy Status <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death <input type="checkbox"/> Unknown if pregnant within the past year	
33a. Date of Injury (Mo/Day/Year)		33b. Time of Injury	
33c. Place of Injury (e.g., Decedent's home, construction site, restaurant, wooded area)		33d. Injury at Work? <input type="checkbox"/> Yes <input type="checkbox"/> No	
33e. Location of Injury (Street and Number or Rural Route Number, City or Town, State)		33f. Describe How Injury Occurred:	
33g. If Transportation Injury, Specify: <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other:			

DECEDENT

DISPOSITION

REGISTRAR

CERTIFIER

CAUSE OF DEATH



604032

VOID

HEREBY CERTIFY THIS DOCUMENT IS AN EXACT COPY OF THE RECORD ON FILE WITH THE OHIO DEPARTMENT OF HEALTH.

AU 23 12 011 960

*[Signature]*  
MORRY BLECH  
REGISTRAR

