

EXHIBIT 1

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
STARK COUNTY, OHIO

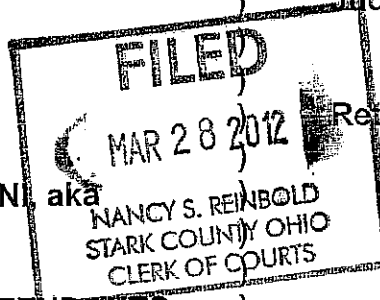
JENNIFER CECCHINI

Case No. 2010DR00063

PLAINTIFF,

Judge: Judith Nicely
By Assignment

VS



Retired Judge John R. Hoffman Jr.
Arbitrator

GAETANO M. CECCHINI, aka
GUY CICCHINI, et al

DEFENDANTS,

CECCHINI ARBITRATION

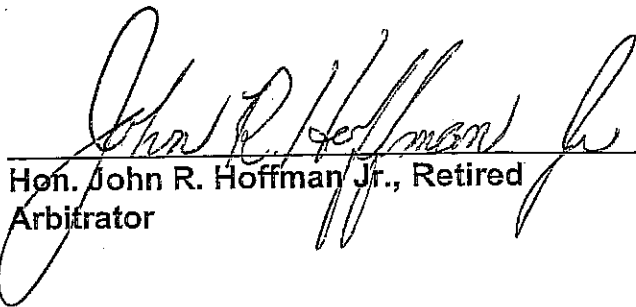
This cause came on for Arbitration pursuant to the written agreement of parties and with Court approval. The Arbitration commenced on the 12th day of October 2011. The Arbitration continued on October 13, 24, 25, 27,28; November 21; December 9,15,16,20, and final arguments were heard on January 19, 2012. The parties provided additional information to Arbitrator based on his request for clarification on two issues which were provided on January 27, 2012 and February 6, 2012. By agreement of the parties the Arbitrator was given until April 1, 2012 to file his Decision.

Present in the Courtroom at all times were Jennifer M. Cecchini (Wife) represented by her attorneys, Stanley R. Rubin and Lorrie E. Fuchs; and Defendant Gaetano M. Cecchini (Husband) represented by his attorneys, Lee E. Plakas and Denise K. Houston.

The Arbitrator heard sworn testimony of the parties concerning the grounds for granting a divorce. The parties were married on October 8, 1994, and there are three(3) minor children born as issue of the marriage, namely Natalie Cecchini, DOB: February 2, 1995, Alessandro "Alex" Cecchini, DOB: August 15, 1996, and Anthony Cecchini, DOB: October 13, 1998.

The Court has jurisdiction over the parties and the subject matter of this case. The parties testified under oath that they lived separate and apart for at least one year, and requested that a divorce be granted to each of them on those grounds(Arb. Tr. p 6). Wife also requested the restoration of her maiden name to Simpson (Arb. Tr. p 6). However, the trial court retains sole jurisdiction to determine issue of grounds, custody, and any other family issues not expressly included in the Arbitration.

The Arbitrator submits his findings and fact and determination of issues as set forth in the Arbitration Agreement dated October 6, 2011 as Exhibit A which is attached, incorporated, and filed with the Court.



Hon. John R. Hoffman Jr., Retired
Arbitrator

IN THE COURT OF COMMON PLEAS
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STARK COUNTY, OHIO

JENNIFER CECCHINI

PLAINTIFF,

vs

GAETANO M. CECCHINI, aka
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DEFENDANTS,

) Case No. 2010DR00063

) Judge: Judith Nicely
) By Assignment

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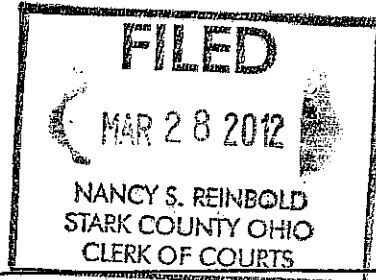


EXHIBIT A
FINDINGS OF FACT AND DETERMINATION
OF ARBITRATION ISSUES

The attached findings of fact and determination of issues is made in accordance with written Arbitration Agreement of the parties and is hereby submitted by the Arbitrator.

It is marked as Exhibit A and is attached and incorporated herein and made part of Cecchini Arbitration.

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I.

OPENING STATEMENT

Since 2007 Gaetano Cecchini ("Husband") and Jennifer Cecchini ("Wife") have dealt with the emotional breakdown of their marriage. They have continued to live their lives being involved with their children, friends, and work responsibilities while under this pressure. They have had to deal with Attorneys, Doctors, Accountants, Court hearings and now a final Arbitration. Understandably, their goal is to finally bring an end to their marriage to resolve the marital issues emanating from said marriage.

Due to the complex nature of this case and in light of many different events that transpired over a period of approximately sixteen years, this Arbitration has taken several months. There were many days of sworn testimony, hundreds if not thousands of pages of exhibits, and a number of different issues raised by the respective parties through their attorneys and expert witnesses. The issues of tracing, valuations of various assets, financial misconduct, expenditure of funds on family members, charitable donations, foreign bank accounts, allegations of missing documents, attorney fees, credits for prior payments are some these issues.

The parties have been unable to resolve these differences. In fact both parties are extremely far apart from each other as to many of these issues. My approach has been to actively listen, participate, and carefully examine the evidence presented in an honest, un-biased and open-minded manner. It is my intent to provide the parties with an equitable resolution of the marital issues as set forth in the Arbitration Agreement based upon a thorough review of all the sworn testimony, review of all admitted exhibits, and in compliance with the statutes and case law of the State of Ohio.

II

ARBITRATION ISSUES

Pursuant to the signed Arbitration Agreement Section II, the parties stipulate that the following issues shall be determined by the Arbitrator.

Purpose of Arbitration

- (A) A determination of what property is separate or premarital property. The commencement date for evaluation is October 8, 1994.
- (B) The division of marital property.
- (C) The division of marital debt.
- (D) Whether income should be computed to Wife for purposes of determining spousal support.
- (E) What provisions should be made for child support, including education and medical expenses.
- (F) Whether there should be spousal support, and if so, how much and for how long.
- (G) Whether there should be a credit or set off or other consideration for funds and/or assets previously transferred from Husband to Wife, including but not limited to the following:
 - a. \$100,000 paid April 2007.
 - b. \$64,950.50 value of the 2007 Cadillac Escalade in September 2007 transferred to Jennifer.
 - c. \$150,000.00 paid in January 2008.
 - d. \$410,326.97 payment for Sun Country Stock.
 - e. \$143,000.00 value of the condo transferred to Jennifer.
 - f. \$31,653.13 paid to Jennifer in April of 2009 prior to her dismissal of the original divorce proceedings.

- (H) The credit against the duration and amount of any future spousal support awarded to Wife for all temporary orders for spousal and/or family support paid by Husband.
- (I) For administrative purposes and convenience, the termination date for the evaluation of the McDonald's Restaurants and the related corporations Cicchini Enterprises and Avanti Corporations shall be December 31, 2009.
- (J) For administrative purposes and convenience, any real estate shall be valued based upon the actual purchase price of the real estate.
- (K) For administrative purposes and convenience, the valuation date for all securities shall be December 31, 2010.

STIPULATION REGARDING AGREED JUDGMENT ENTRIES

Pursuant to Section XV(A) of the Arbitration Agreement the parties stipulated that on June 6, 2011, in an Agreed Judgment Entry in *Cecchini v. Cecchini*, the Participants agreed that the entire balance of attorney fees, expert fees, and expenses paid by the Husband pursuant to the Order shall be credited and serve as a deduction against any property division award that may be ordered against Husband. The Participants stipulate that the entire balance of attorney fees, expert fees, and expenses paid by Husband pursuant to the June 6, 2011 Judgment Entry shall be credited and serve as a deduction against the Arbitrator's final division of marital property award. The Participants agree that the division of marital property shall first be determined without regard to the above credit. Then, after the final division of marital property has been determined, Wife's share shall be reduced by the amount established in the June 6, 2011 Judgment Entry.

In Section XV(B) of the Arbitration Agreement, the parties stipulated that "on December 7, 2010, the Court in *Cecchini v. Cecchini* issued a Judgment Entry ordering

that Husband was entitled to a credit and deduction of the payment of attorney fees and expert fees paid by Husband. The Participants stipulate that the entire balance of attorney fees, expert fees, and expenses paid by Husband pursuant to the December 7, 2010 Judgment Entry shall also be credited and serve as a deduction against the Arbitrator's final division of marital property award. The Participants agree that the division of marital property shall first be determined without regard to the above credit. Then, after the final division of marital property has been determined, Wife's share shall additionally be reduced by the amount established in the December 7, 2010 Judgment Entry."

In Section XV(C) of the Arbitration Agreement, the parties further stipulated that Husband is entitled to present the argument that any payment of attorney fees, expert fees, and expenses paid by Husband in relation to *Cecchini v. Cecchini* and not addressed in the two aforementioned agreed entries should be credited and serve as a deduction against the Arbitrator's final division of marital estate.

III

Applicable Domestic Relations Statutes and Law

- a. Pursuant to Section XIV of the Arbitration Agreement the Arbitrator shall apply the applicable law of the State of Ohio, including but not limited to the following, when considering the issues presented during arbitration.
- (A) Spousal Support - RC §3105.18.
 - (B) Division of Marital Property between Husband and Wife
RC §3105.171.
 - (C) The Tracing of Separate/Premarital Assets - RC §3105.171.
 - (D) Set offs - RC §3105.171; RC §3105.73.
 - (E) Imputation of Income to Wife - RC §3119.01
 - (F) Financial Misconduct - RC §3105.171
- b. The Arbitrator has reviewed the applicable Ohio Revised Code Statutes and case law. Arbitrator accepts and adopts the case law presented by the respective parties. The Arbitrator has taken into consideration these statutes and case law before making his award. Where Arbitrator feels it is appropriate I will cite the pertinent statute or case law.

IV

MARITAL TIMELINE

The parties were married on October 8, 1994. Three children were born as issue of the marriage, namely: Natalie Cecchini, DOB. February 2, 1995, Alessandro "Alex" Cecchini, DOB August 15, 1996 and Anthony Cecchini, DOB October 13, 1998. Prior to their marriage Husband was an established businessman. He owned 100% of Cecchini Enterprises, Inc. ("CEI") which owned 16 McDonald's restaurants and had various assets and liabilities. Mr. Cecchini also had a 100% ownership in Avanti Corporation ("Avanti") which help manage CEI, 50% ownership in GTL Corporation (real estate development company) and had in his personal name certain real estate holdings, cash and marketable securities.

Just one day prior his marriage and within days after his marriage Husband executed commercial loans to Bank One Akron totaling \$6,313,497.00 (Date page 00736). On October 11, 1994, Husband made a purchase of 10,000 shares of McDonald. Husband claims it came from personal funds (Defendant Exhibit C-11 Davila Arb. Tr. p 866). However in 1993 no securities were held and cash was only \$67,398.00. Then on October 18, 1994, Husband purchases 50,000 more shares of McDonald's stock plus 15,865 shares of Healthcare Inc for \$1,863,270.00 with two personal checks (\$449,971.00 and \$1,352,500.00). In September 1995 the McDonald's shares are sold for \$1, 903.681.00 making a profit of about \$550,000.00. On December 6, 1995 CEI transfers \$1,225,000 for 350,000 shares of Sun Country Bank stock. In 1997, additional shares are purchased at a cost of \$617,498.00.

Husband continued to purchase stock in 1998 for \$243,926.00 and made several more purchases during 1999. Finally on January 25, 2002, he bought his final stock in Sun Country for an additional \$390,000.00. In total the cost of the stock was about \$3,000,000.00. During this period Husband was a director of the Bank. He was a member of the important loan committee. He had regular phone contact with bank personnel, made trips to California, received a director salary and conducted many of his bank activities out of the office located at the marital home.

On August 22, 2003, Husband sold all of the Sun Country stock for \$9,976,225.00 and \$9,733,787.50 was transferred into Husband's new account at Northwestern Baird. These funds were then dispensed into a Bank One Account 4813 with a balance of \$3,446,449.00, an existing Key Bank account \$1,890,515.00 (prior balance \$37,300.00). These accounts later became JP Morgan Chase #6700 which was used to open the Gaetano N. Cecchini Trust in 2006. On December 17, 2008, a purchase of \$1,520,000.00 was made of Ford Stock and it sold within six months for \$3,027,571.00. On October 30, 2003, \$2,600,000.00 was given to CEI for a high balance account at Bank One #3332 - then \$2,000,000.00 was moved to CEI Bank One Trust #8300. The remaining funds from the "Northwestern Baird account" were given to Avanti \$308,096.00; Husband \$114,000.00; Charter Trust \$250,000.00 and \$770,000.00 for Ohio Tuition Trust for college of children

In 2006 another major investment was made by Husband when he decided to invest in First Solar Corporation. This purchase resulted in a huge profit. Another major event occurred on March 13, 2007, when Husband sold 9 of his premarital McDonald's for \$11,500,000.00.

On May 22, 2008, Husband opened a new account at First Merit Trust #414-00. Finally, beginning in December 2009, Husband began moving assets out of this First Merit Trust Account to acquire shares of Southport Holding Company ("Southport").

During this entire period of time Husband was overseeing his restaurants, selling and exchanging real estate, buying and selling stocks, and had been involved in a major lawsuit with his former wife. During the first divorce filed by his present Wife, Husband made a major land purchase of the Stark County Farm. In the second and current divorce Husband finalized the purchase of 6,750,000 shares of Southport. The Arbitration was signed October 12, 2011.

V

WHAT PROPERTY IS SEPARATE OR PREMARITAL

This question was perhaps the most controversial and contested issue argued by the parties and their attorneys. It certainly was the most time consuming and complex issue for the Arbitrator.

Over the course of sixteen years, many events occur that have an impact on this determination. There are two facts that are not at issue. First, the Husband was an established successful businessman with significant premarital assets. Second, the Wife was a good Mother, marital partner, and to an extent was involved in some of Husband's businesses.

There is no easy format to address this issue. Perhaps the best way to address the issue is to examine the premarital assets of Husband owned prior to marriage. They can be divided into three categories. The categories would be his corporations, real estate and securities. The next issue to address is the tracing and appreciation of the assets throughout the marriage. The final question relates to whether any of Husband's separate or premarital property exist as of December 31, 2010.

A. PREMARITAL REAL ESTATE

At the time of his marriage, Husband had certain premarital real estate holdings. These holdings were held in his personal name, by a 50% ownership in GTL Corporation (land development company) and 100% KPC Associates, Inc. None of these original real estate parcels still exist. I will focus on these holdings by the way they were held.

1. Personal Real Estate

According to Defendant's (Husband) Exhibit TT in 1993 he held in his personal name the following real estate parcels: Overhill property; Hallandale Condo, ½ interest in 23 acres in Plain Township and North Royalton all worth a combined \$479,000.00. In 1994 and prior to his marriage, Husband made two major acquisitions. On May 31, 1994, he purchased 5590 Dressler Road from his former wife Mary Ann Galmesh for \$766,684.50. This purchase was to end up with lawsuit and the final outcome of Husband paying approximately \$2,800,000.00 to his former wife. Husband also purchased the Bertram home for about \$560,000.00. As a result of these acquisitions his net worth increased to \$1,619,497.00 versus \$479,000.00 as of 1993. (Defendant's Exhibit TT)

It is unclear where the funds came from to purchase these assets. Husband did have a mortgage on Bertram and there were clearly funds available in CEI for these purchases. However, it is not clear how this appreciation of \$1,140,497.00 (\$1,619,497.00-\$479,000.00) occurred prior to marriage.

2. GTL Corporation

GTL Corporation was established in 1986. It was a real estate holding company. All real estate purchased by GTL was acquired prior to October 8, 1994. Three(3) parcels were sold prior to the marriage and all remaining parcels were sold after the marriage. The total cost of all real estate held by GTL Corporation was \$2,061,900.00. In hindsight, it is also clear that through the years that all the land sold for approximately \$7,463,200.00 (Defendant's Exhibit DD-11). In 1994, Husband only owned 50% of

GTL. On October 11, 1994, GTL got two loans from Bank One Akron totaling \$3,285,000.00. Note #26 in the amount of \$1,420,000.00 paid off a mortgage at Wayne County Bank and Note #18 in the amount of \$1,865,000.00 was paid to CEI for money advanced GTL for taxes, interest and related expenses. (Base stamp 00736). According to the 1994 GTL tax return, GTL had assets worth \$2,342,876.00 and there was a "retained earning loss" on the books of \$1,128,114.00. This would later benefit Avanti Corporation when GTL was merged into Avanti in 1998. In 1995 an independent appraisal was done by Bill Lemon of all the GTL land for FDIC purposes in acquiring Sun Country Bank stock. Mr. Lemon felt its value was \$3,500,000.00 not \$9,000,000.00 as asserted by Husband in his 1994 Financial Statement nor as listed on GTL's tax return.

It is only important to note that in 1997 Husband was able to secure 100% of GTL through a GTL bankruptcy. GTL was clearly not able to meet its obligations as of 1997. GTL was mostly vacant land as such it had little or no revenue.

3. KPC Associates Inc.

This asset consisted of 15 acres of land and a building. It is referred to as Castlebar on Husband Exhibit TT. In 1993, it was worth \$296,000.00 and in Husband's 1994 statement it was listed at \$347,728.00. It was later merged into Bambini and finally sold.

B. PREMARITAL SECURITIES AND CASH

Another asset area that played a major part in the growth of assets was in the area of stock acquisitions. This area is also a major area of disagreement between the

parties.

Husband presents on his unaudited 1994 financial statement that he had cash of \$134,849.00 and marketable securities worth \$299,960.00. Whereas, in 1992, 1993, and 1995 he had no marketable securities and in 1993, his cash was only \$67,395.00. Husband never presented any account statement reflecting the cash amount in his personal name.

C. PREMARITAL CORPORATIONS CEI AND AVANTI

A. Cecchini Enterprises, Inc. (CEI)

In 1967 Husband acquired an ownership interest in his first McDonald's restaurant, which was located in Warren, Ohio. (Husband Affidavit , #7) In the following year Husband purchased from McDonald's Corporation a restaurant in Columbus, Ohio. At this time Husband created Avanti Corporation as a C-Corporation to manage the restaurant. (Defendant's Exhibits UU3 - UU4). In 1972, Husband became involved with a second McDonald's restaurant in Columbus, Ohio. On March 31, 1975, Husband sold his two Columbus McDonald's restaurants to McDonald's Corporation in exchange for \$750,000.00 worth of McDonald's stock. (Husband Affidavit #14) Thereafter, CEI was incorporated as a C-Corporation on April 28, 1975 with the McDonald's stock being its first asset. (Husband Affidavit #15)

On May 1, 1975, CEI purchased five restaurants in Stark County, Ohio. Husband brought his managers and supervisors from Columbus with him to Stark County. By the time Husband and Wife were married, CEI had 16 established restaurants with 720 employees and Avanti had over 38 employees. (Husband Exhibit

UU - Affidavit #19)

Each party retained their own expert business valuers to address the issue of what was the premarital value of CEI and what is the marital value of CEI. The Wife retained CPA Frank Monaco and the Husband retained CPA Mike Zeleznik. Both presented sworn testimony and exhibits as to their opinions on these issues. Mr. Zeleznik valued the 16 stores at \$13,857,253.00 which represented 65% of sales of all the restaurants as of 1994 and in Chart M 0019 Zeleznik valued the same 16 restaurants using the McDonald's Method of Valuation at \$13,818,127.00. (Defendant Exhibit L) (Zeleznik Arb Tr p. 675-76). However, he reduced this amount to \$12,034,372.00 after taking into consideration all of CEI assets and liabilities. (Zeleznik Arb Tr. p. 547,573, and Defendant's Exhibit L p 4).

To calculate the equity of the seven stores that still exist as of the time of the divorce, Zeleznik determined the portion of the total sales of all 16 stores that was generated by the seven stores. Per Zeleznik's calculations, the seven stores were worth \$6,725,000.00 and the equity of the remaining nine stores as of December 31, 1994 was \$7,105,000.00. (Zeleznik's Arb. Tr. p 547-48; 576, and Defendant's Slide at A-1).

Zeleznik then rendered his opinion as to the value of these seven stores as of the stipulated date of valuation for purposes of the divorce, which is December 31,2009. Zeleznik testified that he utilized two different valuation methods for his valuation: (1) a six times multiple of EBITDA (earnings before interest, taxes, depreciation, and amortization); and (2) the McDonald's method, which uses a 4.5 multiple. Zeleznik's EBITDA valuation method resulted in a valuation of seven

McDonald's stores of \$10,522,895.00 as of December 31, 2009. Zeleznik's McDonald's valuation method resulted in a valuation of the seven McDonald's stores of \$11,265,015.00 as of December 31, 2009. (Zeleznik's Arb. Tr. p. 541-43 and Defendant's Slide at A-2.)

Zeleznik took the average of the two valuations, and derived \$10,894,000.00 as the value of the seven stores as of December 31, 2009. (Zeleznik's Arb. Tr. p. 548 and Defendant's Slide at A-2)

Because the nine restaurants were sold prior to the date of valuation for the parties' divorce, he maintained they had no impact on the valuation of the remaining seven restaurants.

Since the business valuation was of CEI and not just the individual restaurants that still existed as of the time of the divorce, Zeleznik also calculated any additional equity for CEI's valuation by considering its other assets and liabilities. As of December 31, 1994, the value of CEI's other assets, which were its investments, less liabilities, was a negative \$398,000.00. However, at year's end in 2009, CEI's assets less liabilities was \$1,022,000.00. Zeleznik explained that the reason this is a positive number in 2009 is because CEI had \$3.8 million dollars as an asset from the sale of the nine restaurants and sale proceeds of CEI's Sun Country Bank stock. (Zeleznik's Arb Tr. p. 548-49; 578 and Defendant's Slide at A-3).

After calculating the equity of CEI as of December 31, 1994 and December 31, 2009, Zeleznik opined that the appreciation in the seven restaurants is \$4,142,000.00. (Zeleznik's Arb. Tr. p. 555). Mr. Zeleznik further testified that he believed that a portion of this appreciation was due to passive factors. Those factors were the power of the

McDonald's franchise system and its brand; the fact that CEI was an established successful business with an established and successful management team prior to the parties' marriage; market forces; and inflation of all assets. (Zeleznik's Arb. Tr. p. 555-59)

Zeleznik expressed his expert opinion that 50% to 75% of the appreciation in the value of the seven restaurants was passive appreciation. This is in part, due to the fact that the restaurants run on auto-pilot, the power of the brand, and the benefit of being a franchisee. (Zeleznik's Arb. Tr. p. 638)

The Arbitrator also heard and considered testimony of Husband, Dr. John Burke, Tom Locke, a McDonald's franchisee, and Robert Dixon, an Avanti employee as to their views on this issue.

Mr. Monaco presented different figures based on his approach. Mr. Monaco used a discounted cash flow method of valuation less a 10% marketability discount. This method resulted in a valuation of the 16 restaurants of \$10,182,000.00. (Plaintiff's Exhibit 71 p. 46 and 47).

Based on Mr. Monaco's approach he contended that the seven remaining stores were worth \$4,959,000.00 as of December 31, 1994 but were now worth \$13,072,000.00 or appreciation of \$8,113,000.00. Mr. Monaco admitted that brand may have some value but gave no deduction for it in his calculations.

The Arbitrator finds that the marital appreciation is \$6,127,500.00 for the seven existing McDonald's franchises. The Arbitrator finds that there was passive factors involved in this appreciation. The Arbitrator believes that 25% and not 75% is the appropriate amount. Therefore, the marital property of the CEI is \$4,595,625.00. This

decision was reached after examining those various factors and in consideration of relevant Ohio law.

With respect to the nine restaurants sold in 2007. They sold for \$11,500,000.00. The Arbitrator finds they were worth \$7,105,000.00 and a 2 million dollar loan was paid off to Chase Bank. CEI had extra assets available in 2009 as a result of this. The Arbitrator finds the marital appreciation was \$2,395,000.00 less the 25% passive appreciation factor. The marital property is \$1,796,250.00 plus \$766,500.00 of additional assets are marital for a total of \$2,562,750.00.

B. Avanti Corp

Mr. Monaco evaluation of Avanti was \$133,098.00 as of September 30, 1994 (Plaintiff Exhibit 71 p. 34) and \$320,417.00 as of September 30, 2009. Mr. Zeleznik's evaluation was \$133,098.00 and \$320,382.81 as of December 31, 2009.

D. TRACING OF SEPARATE PROPERTY

The law in Ohio sets forth a clear definition of "Marital property" at RC §3105.171(A)(3)(a).

"Marital property" is defined as:

- (i) All real and personal property that currently is owned by either or both of the spouses including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage.
- (ii) All interest that either or both of the spouses currently has in any real or personal property, including but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage.

- (iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage.

Alternatively, the statute provides that marital property does not include any separate property RC §3105.171(A)(3)(b).

Further, if a spouse commingles separate property with property of any type, its identity as separate property is not destroyed unless the separate property is not traceable. (RC §3105.171 (A)(6)(b). As for the appreciation of any separate property during the marriage, The Supreme Court of Ohio in Middendorf v. Middendorf (1998) 82 Ohio State 3rd 397) held that if the evidence indicates that any appreciation on separate property is due to the labor, money or in-kind contribution of either spouse the value of the appreciation is marital property. The standard of proof on this issue is by a preponderance of the evidence. Hirt v. Hirt, 9th App. No. O3CA110-M, 2004-Ohio-4318 and Modon v. Modon (1996) 115 Opp App 3rd 810, 815, 686 NE 2nd 355.

TRACING SECURITIES AND REAL ESTATE

The purchase of various securities that took place during the marriage greatly impacted the value of the marital estate. This area is also one of immense disagreement between the parties.

The Arbitrator accepts the fact that Husband's total premarital net worth before 1994 would allow him to have assets that exist today that could represent separate property. However, it is evident that the vast majority of his premarital property existed in the nature of fixed assets such as vacant land and value of his McDonald's franchises.

The Arbitrator finds that in relation to certain post-marital assets it has not been proven by a preponderance of the evidence that they are Husband's separate property.

The rationale for this determination centers on several facts. Husband's course of borrowing and managing money throughout the marriage, the marital funds generated by both parties during the marriage, the fact that no marital debt exists and lack of certain documentation on the part of the Husband.

On October 7 and October 11, 1994, Husband executed three (3) commercial loans for a total of \$6,313,497.00. The Arbitrator finds that Bank One Note #75 for \$3,028,487.00 appears to be a consolidation of existing obligations that CEI had for the operation and remodeling of certain existing McDonald restaurants. Notes #18, #34, #59 total very close to the amount borrowed in Note #75. This debt was paid off during the marriage. GTL Note #26 in the amount of \$1,420,000.00 went to pay off the loan at Wayne County Bank. GTL Note #18 in the amount of \$1,865,000.00 produced a much different effect. GTL was a Corporation comprised mainly of vacant undeveloped land. It needed regular support from CEI to meet its obligations. In fact each month the account receivable continued to grow. In 1997, Husband gained 100% ownership in GTL by way of bankruptcy. GTL needed time to sell off its land acquisitions. GTL had no cash flow.

When GTL got the Bank One loan and CEI received these funds it was instant capital for CEI. These funds were put into a new Merrill Lynch account (Defendant's Exhibit C-3). Husband admits that these funds were used to purchase 50,000 shares of McDonald stock and 15,865 shares of Healthcare stock. (Defendant's Exhibit C-3) The McDonald's stock was sold in September 1995 for \$1,903,682.00 resulting in a profit of

\$551,182.00. These proceeds were used to purchase 350,000 shares of Sun Country Bank at a cost of \$1,225,000.00. Husband submits that he used premarital funds available to him to buy Sun Country. Wife says that he used borrowed funds, marital income or other methods to purchase the stock. The huge appreciation on the stock Husband claims to be passive appreciation.

The Arbitrator finds that Husband's active involvement with the bank as a director, member of the important loan committee, regular phone contact with bank officials, director's salary, trips to California and utilization of a marital home office clearly establish a labor and monetary contribution to the stocks' appreciation. It is active appreciation and as such is marital property.

This finding has the effect of denying many of Husband's tracing arguments particular as to real estate that now exists.

VI

SOUTHPORT BANK INVESTMENT

The purchase of this asset is the final major area of controversy between the parties, and for the Arbitrator it was a purchase that raised many questions. Husband set forth the following explanation of this purchase:

Husband became interested in investing in another bank at the end of 2006. Husband met with the president and various board members of Southport Financial Corporation ("Southport") in December of 2006. He also reviewed several other bank investment opportunities in California, Florida, and Ohio. (Husband Affidavit at ¶¶69.)

According to Husband's finding of fact and testimony of Mr. Davila, Husband sold nine of his McDonald's restaurants with the intent of using the proceeds to invest in Southport. However, Husband claimed that was not the ideal time for investing because the value of the stock significantly increased and there were no shares available. (Davila Arb. Tr. p. 970-71)

Southport faced financial challenges and on October 2, 2009, the FDIC issued a cease and desist order after completing its audit. It was at this time that Husband had an opportunity to purchase Southport stock at a historically low price. (Id. at ¶¶67-68.)

Husband resurrected his interest in investing in Southport in late October of 2009. By December 29, 2009, he had executed a letter of intent for the purchase of Southport stock. By January 14, 2010, Husband made a verbal pledge to the Board of Directors and provided them with copies of his statement from his First Merit trust account ending in #414-00 so he could demonstrate that he had the assets available to

purchase the stock. Husband asserts that other board members liquidated their assets to transfer to Southport in order to bolster its financial position, while other investors and board members contributed over \$19.5 million. (Id at ¶69.)

Husband prepared his Federal Reserve Board Applications, and the Board of Directors approved the applications, including the change of control request. The number of shares that could be issued was increased to 30 million. (Id.)

On February 12, 2010, Husband deposited \$7.5 million from the First Merit account into an escrow account at First Merit Bank. (Id.)

On June 22, 2010, Husband purchased Southport's M & I bank note with a balance of \$8,429,066.01 for \$2,631,131.23. The funds for this transaction also came from Husband's First Merit trust account. Subsequent to this transaction, Husband traded the note for additional shares. (Id.)

Husband currently has a total of 6.75 million shares. (Id.)

Husband later asserts that Southport Stock was purchased with assets arising from proceeds of sale of Sun Country Bank and by First Solar Stock which was acquired from Sun Country proceeds.

The Wife has a different understanding. Wife sets forth her view of this purchase:

Husband invested 10.1 million dollars in Southport Financial Corporation ("Southport"), the parent company of Southport Bank. The money was transferred into the investment during the summer months of 2010.

Husband claimed that he made a binding commitment to invest money in Southport while he and Wife were in the process of reconciliation talks and before he

was served with the restraining order in this case.

The present divorce action was initiated by Wife on January 20, 2010 (Wife's Summary Exhibit 24). An appearance on Husband's behalf was filed on February 2, 2010 by Attorney James Cahn. Husband's adult son Gaetano Armand Cecchini was served with a copy of the Complaint and Restraining Order, by certified mail, on January 26, 2010. Husband's adult daughter Elizabeth Cecchini was also served with a copy of the Complaint and Restraining Order, by certified mail, on February 1, 2010. Husband was personally served with a copy of the Complaint and Restraining Order on February 7, 2010.

Husband was not legally bound to any investment in Southport when he was served with the Complaint for Divorce and the Restraining Order in this case. (Wife's Summary Exhibit 18)

The March 1, 2010 "letter of intent" clearly provided that Guy's interest in the stock holding was still in its preliminary stages. The first line of the letter of intent reads "Pursuant to our recent discussions, this Letter of Intent shall serve to set forth in writing our preliminary and non-binding understanding regarding a possible transaction ..."
(Wife's Summary Exhibit 18.) Paragraph 9 on page 3 of the letter of intent reads, "This Letter of Intent is intended to constitute a non-binding expression of the mutual intent of the parties regarding the subject matter hereof" and continues "Neither Buyer nor Seller shall have any legally binding obligations, rights or liabilities of any nature whatsoever to any party hereto or to any other persons or entities, whether pursuant to this Letter of Intent or relating in any manner to the Transaction or the consideration thereof." Wife feels no formal stock purchase agreement had been effectuated as of March 1, 2010.

Furthermore, Husband continued negotiations well into September 2010 prior to his actual investment in the fourth quarter of 2010.

The March 1, 2010 "letter of intent" was submitted by Husband eleven (11) days after he had been served with a Restraining Order.

Husband also claimed that once he placed money in an escrow account he was bound to proceed with the investment. Wife claims this assertion is also not persuasive. The terms of the escrow agreement clearly provided that Husband could terminate the escrow agreement and get his money back. (Wife's Summary Exhibit 51-1)

Wife presented a letter from Husband evidencing Husband acknowledgment of his unconditional right to terminate the escrow agreement.

Husband transferred the sum of \$8,823,530.00 to First Merit Bank Account #201414-00 on March 26, 2010. This transfer occurred thirty-seven (37) days after Husband had received the Restraining Order. This transfer also took place after Husband had presented the March 1, 2010 non-binding letter of intent. (Wife's Book 2 Exhibit 19 and Wife's Summary Exhibit 26).

Wife contends that the only way the court allowed Husband to proceed with his Southport Bank investment was to make it perfectly clear that if the deal went bad Husband and only Husband would bare the loss for the investment.

Husband was only being permitted to proceed with the investment if he secured Wife's share of the investment by placing a lien on the real estate accumulated by the parties during the marriage.

Judge Nicely followed up the May 10, 2010 hearing with a Judgment Entry.

(Wife's Summary Book Exhibit 16). The entry specifically stated that the restraining order would only be lifted after Husband's counsel prepared a lien on the real estate to secure Wife's interest in the Southport Bank investment.

Husband nor Wife's counsel never prepared the lien; consequently, the restraining order was never lifted.

When Husband sought approval from the Court in May 2010 to make the investment in Southport, he advised the Court that he intended to invest \$7,500,000.00 (Pg 84, 85 of the May 4, 2010 transcript).

Husband ended up investing \$10,100,000.00, or \$2,600,000.00 without any notice to or approval from the Court according to the Wife's position.

Wife submits that Husband misrepresented the timing of the investment, the amount of the investment and his intention to secure Wife's interest in the investment to the Court in an effort to secure permission to make an extremely risky investment that essentially tied up most of the liquid assets available to the parties.

According to Husband's 2009 personal financial statement, Husband maintained a portfolio of marketable securities and cash valued at \$9,208,048.00. (Husband's Bate No. 400110). By investing in Southport in 2010, despite a restraining order, Husband converted investments with high liquidity and defeated Wife's interest in the assets as he made the assets no longer easily convertible into cash and placed it out of Wife's reach.

After evaluating the position of each party and after a review of court proceedings the Arbitrator finds that the Southport Stock was purchased with Husband's separate property from the sale in 2007 of his nine McDonald's franchises.

There is no financial misconduct since it is his property. There is no marital property subject to dissipation, destruction, concealment or fraudulent disposition.

VII

SPOUSAL SUPPORT

The determination of spousal support is controlled by R.C.3105.18. This section indicates that spousal support must be both appropriate and reasonable and delineates factors the Court is to consider in determining spousal support. Section 3105.18 sets forth these factors:

A Income of the parties from all sources.

Husband is the shareholder of CEI (100%), Avanti (49%), and Bambini (100%). He derives his personal income from wages, dividends, interest income, rental income and social security benefits. In 2011 Husband represented his income to be \$246,176.00 plus he received a tax refund.

The Arbitrator finds that his income is subject to deviation and should be higher. Wife is unemployed with no income.

B Relative earning abilities of the parties and whether they are unemployed/underemployed.

Husband attended Nobile Collegio Campana, Istituto di Ragioneria Marconi, in Ostimo, Italy prior to coming to the United States. (Husband's Affidavit at UU-1). In 1957, Husband first came to the United States to work for his father in the family business, Cicchini Fuel Oil and Coal Company in Kenosha, Wisconsin. (Husband's Affidavit at UU-1). After his arrival in Kenosha, Husband joined the Wisconsin National Guard and was called back to active duty at various times. (Husband's Affidavit at UU-1). In 1960, Husband took over the family business following his father's retirement. (Husband's Affidavit at UU-1). Soon after, Husband started Little Wheels of Kenosha, a

motor scooter and motorcycle company. (Husband's Affidavit at UU-1). In the Fall of 1967 Little Wheels, then with four locations in two states, was sold at the same time that Husband sold Cicchini Fuel Oil and Coal Company. (Husband's Affidavit at UU-1).

Wife graduated from Jackson High School in 1985, and is currently enrolled in college courses through Indiana Wesleyan online. (Wife's Arb. Tr. p. 226). Wife is majoring in business administration with a finance minor and is approximately one year away from receiving a Bachelor's degree. (Wife's Arb, Tr. p. 227).

Wife testified that she will be applying to law school this summer. (Wife's Arb. Tr. p. 227). Wife testified at the arbitration that she was physically able to work, that she was physically, mentally, and emotionally able to pursue and receive a college degree, that she was very determined to go to law school, and that she believed she would succeed in law school. (Wife's Arb. Tr. p. 328).

In addition, Wife has already completed McDonald's formal training program, ending with Hamburger University. (Wife's Arb. Tr. p. 227)

Wife has worked prior to her marriage to Husband as a Wendy's manager and as a manager in training at McDonald's, and worked during the marriage as well. (Wife's Arb. Tr. p. 229)

C Age, physical and mental health of the parties

Wife is 44 years old and in relative good health. Wife was diagnosed with breast cancer in June of 2007, and treated at the Cleveland Clinic. (Wife's Arb. Tr. p. 269-70). Wife currently takes Tamoxifen pills each day, and sees her doctor every six months. (Wife's Arb. Tr. p. 271-72) Wife confirmed at the Arbitration that her cancer is in remission. (Wife's Arb. Tr. p. 272). Wife testified that she is physically able to

undertake regular household activities, regular life activities, and work. (Wife's Arb. Tr. p. 328).

Husband is 72 years old and in relatively good health.

D Retirement benefits of the parties

There are no formal traditional retirement accounts such as IRA's or 401(k) accounts.

Husband currently receives Social Security benefits in a gross amount of \$20,000.00 per year.

E Social Security Benefits Received by Children

The children also receive Social Security benefits in the amount of approximately \$500.00 per child per month as a result of Husband's work history and age. (Husband's Affidavit ¶197)

F The Duration of the Marriage

The parties were married on October 8, 1994. Wife filed for divorce on April 20, 2008 and dismissed the divorce in June of 2009 in an attempt at reconciliation. Approximately seven months later, in January of 2010, Wife re-filed for divorce. Wife testified that at that time there was no chance of reconciliation. The duration of the marriage is therefore from October 8, 1994 to January of 2010. This is a marriage of approximately 15 years.

G Whether the Custodian of the Children Should Seek Employment Outside the Home.

The youngest of the parties' children, Anthony, recently turned 13 years old and attends school during the day. The parties' oldest child, Natalie who is 17 attends

Akron Hoban. Their middle child, Alex, attends boarding school, so does not reside with either parent for approximately nine months out of the year. The children are mainly in Wife's care. Wife provides the transportation, housekeeping, and meets daily living requirements of the children.

H Standard of Living

Arbitrator finds that the parties maintain a high standard of living. The children attend private schools. The family has several homes. The parties enjoy entertaining, travel and are able to purchase anything they desire.

I Assets and Liabilities of the Parties, including Court-Ordered Payments

Husband is currently paying Wife the sum of \$30,000.00 per month, plus one half of all medical bills and tuition costs for all three children. Arbitrator notes that tuition amount is significant. Husband has provided other support for family.

J Contribution to the Education, Training, or Earning Ability by One Party to the Other

Husband and Wife were not married when Husband obtained his college degrees and as he built himself up as a successful businessman. Wife has worked towards her online undergraduate degree during the course of the divorce case.

K Time and Expense Necessary for the Spouse Seeing Spousal Support to Acquire New Skills for Employment

There was evidence presented that Wife desires to continue her education eventually seeking a law degree.

L Tax Consequences

Any spousal support ordered in this case would be deductible to the payor

Husband and taxable income to the payee Wife. This Arbitrator allocates all of the dependency exemptions to the Husband.

M Other Relevant Factors

Arbitrator notes that Wife will have a substantial property settlement to invest and Husband has paid support for a protracted period of time.

VIII

CHILD SUPPORT

R.C. 3119.04(B) addresses how to calculate the child support obligations when the parties combined income is in excess of \$150,000.00.

"If the combined gross income of both parents is greater than one hundred fifty thousand dollars per year, the court, with respect to a court child support order, or the child support enforcement agency, with respect to an administrative child support order, shall determine the amount of the obligor's child support obligation on a case-by-case basis and shall consider the needs and the standard of living of the children who are the subject of the child support order and of the parents. The court or agency shall compute a basis combined child support obligation that is no less than the obligation that would have been computed under the basic child support schedule and applicable worksheet for a combined gross income of one hundred fifty thousand dollars, unless the court or agency determines that it would be unjust or inappropriate and would not be in the best interest of the child, obligor, or obligee to order that amount. If the court or agency makes such a determination, it shall enter in the journal the figure, determination and findings."

R.C. § 3119.04(B); Suglio v. Suglio, Stark App. No. 2006-CA-00235, 2007-CA-1802. See also Lyons v. Bachelder (Sept.8, 2005), 5th App. No. 2004-CA-0018 ¶ 29.

"R.C. § 3119.04(B) indicates that, generally, child support should be at a number no less than it would be when computed under the basic child support schedule and applicable worksheet for a combined gross income of one hundred fifty thousand dollars (\$150,000.00)." Lyons v. Bachelder (Sept. 8, 2005), 5th App. No. 2004-CA-0018, ¶ 31. R. C. § 3119.04 also requires the trial court to consider the needs and standard of living of the children when doing the case-by-case determination of child support. Lyons v. Bachelder (Sept 8, 2005), 5th App. No. 2004-CA-0018, ¶ 31.

The Arbitrator notes that Husband is paying all tuition expenses of school

Husband is given credit for these payments. Wife will have income from property division awarded.

IX

OTHER ISSUES

A Financial Misconduct

The party alleging financial misconduct carries the burden of proof to establish the elements of financial misconduct. Orwick v. Orwick, 7th App. No. 04 JE 14, 2005 Ohio 5055, ¶ 27, citing Hammond(Sept. 14, 1995), 8th App. No. 67268, 1995 WL546903. See also Boggs v. Boggs, 5th Dist. No. 07 CAF 02 0014, 2008 WL 795305, ¶ 73, citing Mantle v. Sterry, Franklin App. No. 02AP-286, 2003 Ohio 6058.

The accusing spouse must provide clear evidence of the following in order to establish financial misconduct.

- a. that the offending spouse profited from the alleged misconduct, or
- b. that the offending spouse intentionally defeated the other spouse's interest in the asset.

Bucalo v. Bucalo, 9th App. No. 05CA2011-M, 2005-Ohio-6319, ¶ 24, quoting Jacobs v. Jacobs, 4th App. No. 02CA2846, 2003-Ohio-3466, ¶ 23; Shetler v. Shetler, 5th Dist. No. 2008CA00036, 2009-Ohio-1581, ¶ 21, citing Eggeman v. Eggeman, 2004 Ohio 6050. Furthermore, there must be some element of wrongful intent or scienter to profit or otherwise defeat the other spouse's interest in order for a claim of financial misconduct to be successful. Orwick, at ¶ 27. See also, Shetler, 2009-Ohio-1581, ¶ 111 (finding that Husband failed to demonstrate Wife's scienter, and stating, "dissipation of an asset alone does not amount to financial misconduct.")

No financial misconduct occurs where a spouse has prior obligations to make court ordered payments, such as child support, without evidence that "he made those

payments to defeat wife's distribution of marital assets or interfere with her property rights." See Callender v. Callender, 7th Dist. No. 03-CA0790, 2004 WL 549484, ¶ 22-26.

When a spouse alleges that the misconduct took place well before the instigation of divorce proceedings, the complaining spouse must prove that the other had a wrongful intent when the conduct occurred. Orwick, at ¶ 28; Babka v. Babka(1992), 83 Ohio App. 3d 428. The alleged misconduct must usually occur during the pendency of the divorce or immediately prior to filing for divorce in order to establish the party's intent or scienter.

The Arbitrator finds that Husband has committed no financial misconduct. The child support issue of Richard Crew was withdrawn by Wife. (Wife's Arb. Tr. p. 317-318) The Galmesh law suit was paid out of premarital funds and it was from a Court decision. As for the charitable donations they are not an insignificant amount. However taken as a whole and in light of Husband's McDonald's businesses, his history of generosity to family, friend and community, and the value of the marital estate, the Arbitrator has no evidence of an intentional intent to dissipate or deprive the Wife of assets of marital evidence.

The issue of Southport Bank is a different matter. Due to the time of purchase the large amount of the expenditure (\$10,100,000.00) and the nature of the investment (risky and not readily liquid) this could have produced a different result. Since the stock has been awarded to Husband from sale of his premarital interest in the nine (9) McDonald's restaurants it is not an issue for consideration.

B Retroactive Child Support

A court cannot retroactively apply child support obligations to a date either earlier than filing, or in between the filing of cases. Retroactive application beyond the date of initial filing simply is not permitted. See, Trump v. Trump (1999), 136 Ohio App.3d 123, 126.

The filing of a divorce complaint does not empower the court to rule on the Husband's responsibilities prior to the action's commencement since prior to the time, he already had an ongoing parental obligation. *Id.* at 127. See also Meyer v. Meyer (1985), 17 Ohio St. 3d 222.

Ohio Rule of Civil Procedure 75(N) permits a trial court to enter temporary support orders during the pendency of a divorce action, as the trial court did in the case *sub judice*. However, the rule does not address retroactivity. Ostmann v. Ostmann, 168 Ohio App. 3d 59, 70-71, 2006-Ohio-3617 ¶ 41.

In Jackson v. Jackson (2000), 137 Ohio App.3d 782,739 N.E.2nd 1203, the Second District Court of Appeals addressed the issue of whether a court could retroactively modify a temporary order via a final divorce decree, and found: "[T]he court cannot retroactively modify an obligation it imposed in a prior temporary order, and then award judgment to the obligee based on the obligor's failure to satisfy the modified obligation in the interim. To do so grants a remedy on a claim for relief on which the obligor had not notice or opportunity to be heard. It is well established that prior notice and opportunity to be heard concerning the determination of any matter affecting a party's right and obligations are essential elements of due process of law." *Id.* citing

Jackson, 739 N.E.2d 1203; See also Drumm v. Drumm (Mar. 26, 1999), 2d Dist. Nos. 16631 and 17115, 1999 WL 198120.

The Ostmann court found that it was inequitable to penalize husband for operating under the Court's temporary order, and noted that "[t]he final divorce decree essentially created an obligation on [husband] to pay an additional sum of money, after the fact, and then penalized him for not having paid it." *Id.* at ¶ 44. The Ostmann court concluded that "a modification retroactive to a previous temporary order violates due process." *Id.* at ¶ 45. "When, as here, parties to a divorce operate under a temporary order of support during divorce proceedings without motions to modify being filed and ruled upon, a trial court cannot in effect retroactively modify that order via the final decree. Any modification, downward or upward, may equitably be applied only prospectively from the date of the decree." *Id.* [footnote omitted].

In this case, where no motions for modification were ever filed, this Court cannot retroactively modify the temporary orders. Any child support order must be only prospective in nature.

It is clear that Husband has been paying child support and spousal support during the pendency of three different cases, including this one, it is not appropriate to order any retroactive support of any kind.

The first divorce was dismissed in June of 2009, Wife re-filed for divorce in January of 2010. The temporary orders in the instant case required Husband to pay Wife \$30,000.00 a month as spousal support, Wife and children's health insurance and half of any expenses not covered by insurance, and the children's tuition. (Temporary

Orders of June 5, 2010, of Judge Nicely) The Arbitrator finds that no retroactive child support is appropriate.

C Italian Accounts

The Arbitrator does not have enough information to make any finding as to this allegation of Wife. Therefore, no value will be set for this issue.

D Gifts to Children of Marital Property

There were transfers to adult children at the time of first divorce. Wife claims the amount was \$1,164,000.00.

E Earnings and Loans paid over course of marriage

The Arbitrator finds that parties had gross income of over \$55,000,000.00 and paid over \$6,500,000.00 in loans during the marriage.

F Misappropriation of Business Documents

The Arbitrator has no way to correctly address this issue. Both parties express very different positions. The Arbitrator will not speculate on this issue.

X

ARBITRATION AWARD

A What is Separate or Premarital Property

The Southport Bank Stock (6,750,000 shares) is the separate property of Husband. CEI and all related companies are separate property of Husband except marital appreciation which is found to be \$7,158,375.00. All real estate is marital.

B Division of Marital Property

1 Husband shall retain all interests in CEI and all related companies.

Husband shall receive one half proceeds from the sale of all real estate. Husband shall retain all other securities plus Exhibit 24 of household property less credit to Wife of \$500,000.00 for marital property given to his children.

2. Wife shall receive the sum of one half marital appreciation of CEI and related companies which is found to be \$3,579,137.50. It shall be payable to Wife by Husband as follows:

- 1 \$1,500,000.00 will be paid within 120 days from the date of the award is filed in Court.
- 2 The balance will be paid in installments of \$500,000.00 every year beginning January 1, 2014 and each year thereafter until it is paid in full. Wife may have liens on Husband's property to insure payment of this amount.

- 3 Wife shall receive one half proceeds from sale of all existing real estate. Each party shall remain in their respective properties until they are sold. All real estate sales are to be commenced within three months. Parties must sell any property that is at or above the initial purchase price. Parties are to share in the cost of sale on a 50 to 50 basis. If any property is not sold after one year of it being listed for sale then said property is to be auctioned.
- 4 Each party will pay their own legal expenses.

C Division of Marital Debt

The Arbitrator finds that there is no joint marital debt. Each party shall be responsible for any debt existing solely on his/her respective names. Each party shall hold the other party harmless on his/her separate debt. The large amount of debts were paid off during the course of the marriage out of marital funds.

D Whether Income Should Be Imputed To Wife For Purposes of Determining Child and Spousal Support

The Arbitrator finds that Wife has not worked in many years; she is providing for the majority of care of the three minor children; she is taking college courses at home; but in light of the fact she will be receiving income from a sizeable property division some adjustment has been made for spousal support and child support.

E What Provisions Should Be Made For Child Support, Including Education and Medical Expenses

The Arbitrator orders the Husband to pay child support in the amount of \$2500.00 per child plus 2% processing fee for the three minor children. Payments shall be made through the Ohio Child Support Payment Central through a wage withholding order or other means available at law. Husband is to be given credit for Social Security payment made to the children as a result of his age. Husband is to maintain health insurance for the children. Wife is to pay the first \$100.00 per child per calendar year of any uninsured expense with Husband paying 50% and Wife paying 50% of any remaining costs. Husband shall be entitled to claim all of the children as dependents on his federal, state, and local taxes.

Husband shall continue to pay all the children's private school tuition until they graduate from high school or reach the age of 18 whichever is the later.

There is no order for any back/retroactive child support.

F Whether There Should Be Spousal Support And If So, How Much for How Long

The Arbitrator having considered all the support factors as enumerated in RC 3105.18, and specifically looking at RC 3105.18(c)(1)(a) the Arbitrator orders the Husband to pay spousal support in the amount of \$20,000.00 per month beginning on May 1, 2012. Spousal Support is to be paid through the Ohio Child Support Payment Central through a wage withholding order. Spousal support is to continue for a period of 60 months; however Husband shall receive a credit of 12 months, which represents an adjustment for spousal support paid during the current divorce case. Husband's

obligation shall therefore terminate at the end of 48 months, remarriage of Wife or death of either party. The Court will not retain jurisdiction to review or modify the amount or duration of spousal support.

G Whether There Should Be A Credit Or Set Off Or Other Consideration For Funds and For Assets Previously Transferred From Husband to Wife, Including But Not Limited To the Following:

a \$100,000.00 paid April 2007:

The Arbitrator finds that the amount should not be credited. It was paid over four years ago. A domestic violence case was invoked. There is no clear reason to grant this credit.

b The credit for payment for the value of Cadillac was withdrawn by Husband.

c The \$150,000.00 paid in January 2008:

The Arbitrator finds that no credit should be given. The divorce was dismissed and there was an attempt at reconciliation. Not enough testimony to warrant a credit to the Husband.

d \$410,326.97 payment for Sun Country Bank:

The Arbitrator found Sun Country Bank to be a marital asset. Therefore, Husband is to be given a \$410,326.97 credit against Wife's property division.

e \$143,000.00 value of the condo transferred to Wife:

Wife confirmed that Husband did not transfer the condo to her pursuant to any court order but instead on his own free will. (Wife's Arb, Tr. p 392-393) Wife also confirmed that this was a condo that Husband purchased with his own money and

allowed Wife's Mother to live there free of charge. (Wife's Arb. Tr. p 392) Wife testified that after she sold the condo, she retained the proceeds. (Wife's Arb Tr. p 393) also (Husband's Arb Tr. p.1679)

The Arbitrator finds Husband should be given credit for the \$143,000.00.

f \$31,653.13 paid to Wife in April of 2009 prior to her dismissal of the original divorce proceedings:

Husband asserts that he transferred \$31,653.13 for expense reimbursement. Since Husband has already received credit for certain attorney fees and related expenses the Arbitrator leaves this credit.

H **The Credit Against The Duration And Amount Of Any Future Spousal Support Awarded To Wife For All Temporary Orders For Spousal and/or Family Support Paid By Husband**

The Arbitrator is giving Husband a credit for 12 months of temporary payments as ordered by Judge Nicely that he has paid to Wife.

I **For Administrative Purposes and Convenience, The Termination Date For The Evaluation of the McDonald's Restaurants and Related Corporations Cecchini Enterprises and Avanti Corporation Shall be December 31, 2009**

The evaluation is that marital portion is \$7,058,375.00.

J **For Administrative Purposes and Convenience, Any Real Estate Shall Be Valued Based Upon The Actual Purchase of Real Estate**

The total value of all marital estate is \$7,170,367.13.

The Arbitrator finds that below listed real property is all marital property with the agreed stipulated value:

Property	Stipulated Value
Le Rivage	\$2,150,000.00
Stark County Farm	\$1,527,416.13
Dressler/Montgomery	\$480,000.00
4571 Erie Street	\$375,000.00
Glengarry	\$650,000.00
1431 - 30 th Street	\$585,000.00
Old Tower Plus Vacant Land	\$957,151.00
Portage	\$124,900.00
Mahoning Road	\$139,000.00
Tyler's Mill	\$143,900.00
Liberty Ave	\$ 38,000.00

K For Administrative Purposes and Convenience, the Valuation Date for all Securities and Investments shall be December 31,2010

The Arbitrator finds that the value of marital is as follows:

Pacific Bank Corp (50,000 shares)	\$433,000.00
Farmer's National Bank Marketable Securities	\$ 7,527.57
First Solar (300 shares)	\$ 39,042.00
First Merit Investment Account	\$838,028.68
TOTAL	\$1,327,587.25