

LawUpdate

News from Gersowitz Libo & Korek, P.C. lawyertime.com

Fall 2009



A DIFFERENT TYPE OF COURT

GLK Sponsors Gardiner
Memorial Basketball Classic

LawUpdate

News from Gersowitz Libo & Korek, P.C.

IN THIS ISSUE { FALL 2009 }

- 3 Of Note
- 4 Wal-Mart Update
- 5 Terrible Tape
A Nightmare of Pain
- 6 **COVER STORY**
**A Different Kind
of Court**
Lawyers Shooting Hoops
- 8 Traumatic Brain Injury
- 9 Our Winning Team
- 10 Exceptional Case
GLK's Michael Fruhling
Featured in New York Magazine
- 11 Settlements & Verdicts

LawUpdate is a publication of
Gersowitz Libo & Korek, P.C.
of New York, NY.

Edited by
Eugene C. Trager & Jennifer Fink

GERSOWITZ LIBO & KOREK, P.C.
ATTORNEYS AT LAW
111 BROADWAY - 12TH FLOOR
NEW YORK, NY 10006
TEL: (212) 385-4410 • FAX: (212) 385-4417
EMAIL: INFO@LAWYERTIME.COM

157 ENGLE STREET
ENGLEWOOD, NJ 07631
TEL: (201) 541-8540
A PROFESSIONAL CORPORATION
INCORPORATED IN THE
STATE OF NEW YORK

Dear Readers,

You may be surprised to find our second edition of the newly redesigned LawUpdate features a cover story on basketball. For 25 years, Gersowitz Libo & Korek, P.C. has been dedicated to providing our clients, friends and peers with up-to-date information about our firm and the issues facing the legal community and this edition of LawUpdate is no different. With that said, part of understanding the work our firm does in the courtroom, is knowing the work we do outside of the courtroom and this summer our entire firm took part in a tremendous community event in the Bronx by sponsoring The 4th Annual Gardiner Memorial Basketball Classic.

The tournament was in support of the Gardiner Foundation, an organization that does some amazing work in the community for families who are coping with the pain and anguish of losing loved ones. You can learn more about the tournament, the foundation, the work they do, and our involvement with this amazing event in the pages to come. You will also find the newest news on our partners and our firms' involvement in the legal community in the "News Brief" section, along with the traditional articles that have been a staple since we first began publishing LawUpdate.

As always, we see this publication as an opportunity to reach out to the extended Gersowitz Libo, & Korek, P.C. community and welcome any responses, comments, or suggestions to help us better serve you.

Sincerely,
Gersowitz Libo & Korek, P.C.



OF NOTE

GLK Featured in New York Magazine 2009

Gersowitz Libo & Korek, P.C. was featured in New York Magazine in the 2009 Personal Injury Litigator's Edition presented by the New York Law Journal.



New York Super Lawyers 2009



Gersowitz Libo & Korek, P.C. is proud to announce that Andrew L. Libo and Jeff S. Korek were named by Super Lawyers magazine as two of the top lawyers in the New York metro area. A publication of the journal Law & Politics, Super Lawyers conducts a rigorous analysis of lawyers across the country to find the best lawyers based on peer review, published articles and many other criteria.

HAVE QUESTIONS?

LAWYERTIME.COM



You can learn more about Gersowitz Libo & Korek, P.C. at:
<http://www.lawyertime.com>.

Contact us at info@lawyertime.com with questions or concerns.

Nuestra pagina de internet está ahora disponible en español, por favor visítenos.



"One needs to be slow to form convictions, but once formed they must be defended against the heaviest odds."

MAHATMA GANDHI

"Our lives begin to end the day we become silent about things that matter."

MARTIN LUTHER KING, JR.



TERROR ON LONG ISLAND PART II

GLK UPDATE

In our last edition of LawUpdate we brought you the story of Jdimytai Damour, a Wal-Mart employee who was trampled by a horde of shoppers at a Wal-Mart in Valley Stream on the day after Thanksgiving 2008.

Jdimytai was hired as a temporary maintenance worker at the Wal-Mart at the Green Acres Mall during the holiday season. On the morning of November 28, 2008, Jdimytai was

pulled away from his duties in order to control the crowd that had gathered for the store's black Friday sales. Upon opening the doors to the store at 5 a.m., the crowd of eager shoppers began to force their way into the store. Jdimytai, alone facing the mob, fell to the ground and was trampled to death while trying to protect a woman who was 8 months pregnant from the crush of the crowd.

This tragic incident was the result of Wal-Mart's inadequate security

measures and safety protocols, coupled with their lack of regard for Jdimytai's inexperience in dealing with crowds.

We are pleased to announce that the U.S. Department of Labor Occupational Safety and Health Administration ("O.S.H.A.") issued a Citation of Violation to Wal-Mart, Inc. related to this incident at their Green Acres location, stating that "reasonable and effective crowd management principles were not implemented to prevent the hazard of asphyxiation by crowd crush." Wal-Mart was required by O.S.H.A to abate the violation.

Recently, attorney Edward H. Gersowitz of our office forwarded a copy of O.S.H.A.'s findings to the New York State Attorney General's Office to push for an investigation by the Attorney General's Office. Gersowitz Libo & Korek, P.C. has been working closely with Jdimytai's family over the past year to make sure that a tragic incident like this never happens again and continues to vigorously investigate as it prepares to file a lawsuit in this matter.



Gersowitz Libo & Korek, P.C., is a proud sponsor of Hoops 4 Hope.

Hoops 4 Hope is a not-for-profit organization that supports youth development in Zimbabwe and South Africa by working with schools, shelters, and community organizations.

For more information, visit www.hoopsafrica.org.



TERRIBLE TAPE

Father of Two Turns to GLK after years of Pain

In 2002, our client, a married man with two adopted children, received news no father of two ever wishes to hear when he was diagnosed with prostate cancer at the age of 52. Although the diagnosis hit him and his family hard, there was hope that the cancer could be removed through a radical prostatectomy in which the cancer infected prostate is removed. The prostate was removed, as was the cancer, but the surgery was far from successful.

A radical prostatectomy was performed in May 2002 at a local hospital to treat our client's condition. The prostate and the cancer were removed and the doctors believed the operation to have been a success. Unfortunately, they were wrong. Although the cancer was removed, there was still a harmful element left inside our client's body that would fester into fur-



Umbilical tape should never have been left inside his body after surgery.

ther medical problems.

The doctor and the surgical team assisting in the procedure failed to ensure that all of the equipment used during the surgery was properly accounted for before finishing the operation. As a result, they left a piece

of umbilical tape inside of our client's body at the end of the procedure. The piece of umbilical tape is a tiny, thread like piece of medical tape used to temporarily hold tissue back during a surgical procedure such as the one our client underwent. However, the tape should never have been left inside of his body after the completion of his radical prostatectomy.

The piece of umbilical tape that was left inside of our client caused a host of medical problems for him. Among the issues that developed from the umbilical tape were: bladder neck contractures and strictures, urinary incontinence, urinary retention, and debilitating pain and discomfort.

Due to these problems, the man had to resort to wearing adult diapers for his urinary problems. On top of wearing adult diapers, he continued to suffer and endure the chronic pains caused by the surgical team's mistake. Furthermore, over the course of six years, he had to undergo a total of 16 separate procedures to correct his condition, one of which included the permanent placement of an artificial sphincter. The artificial sphincter is a device that was surgically implanted in his body that allows him to control his urine so that he no longer had to wear the adult diapers.

After years of anguish, 16 surgeries, and an artificial sphincter, the man turned to the medical malpractice law expertise of Gersowitz Libo & Korek, P.C. to seek justice. Jeff S. Korek handled the case, which was tried before Justice Geoffrey Wright in the Supreme Court, Bronx County in July of 2009. Thanks to the hard work of Gersowitz Libo, & Korek, P.C., the jury awarded our client \$3 million dollars for his injuries and pain and suffering.

A DIFFERENT TYPE OF COURT

Gersowitz Libo & Korek, P.C. Sponsor the 4th Annual Gardiner Memorial Basketball Classic

COVER STORY

Gersowitz Libo & Korek, P.C. jumped onto a new kind of court this summer to support a great cause by sponsoring the 4th Annual Gardiner Memorial Basketball Classic in the Bronx. Our firms' partners, Edward H. Gersowitz, Andrew L. Libo, Jeff S. Korek, Michael A. Fruhling, and the entire office all converged on

demonstrated to Korek while playing basketball. After losing his mother and sister in 2006, Gardiner lost 5 family members and a close friend in an automobile accident on the Bronx River Parkway in July of that year. The Gardiner Memorial Basketball Classic, which began as a small community event, grew into a foundation that reaches out to families who are suffering from the loss of loved ones

family didn't just sponsor the program, nor did they simply watch as other teams tore it up on the court. Members of the firm, supported by a cast of family and friends, took to the court themselves as team Lawyertime.com. Lawyertime.com played with heart, but eventually lost to the tournament champions, Jadakiss, which featured former University of Arkansas star Kareem Reid and former NBAer Kenny "K Sat" Saterfield.

"It was truly wonderful to have so many teams come out to compete on the court and celebrate the achievements of these families in need," said Jeff S. Korek. "The Gardiner Founda-



the outdoor St. James Park with their families and hundreds of spectators for a weekend of incredible basketball action, and to award three \$1,500 scholarships to college bound students.

The tournament, which is the premier event for the Gardiner Foundation, caught the attention of Jeff Korek while playing in a Westchester basketball league with the foundation's founder Dexter Gardiner. Dexter Gardiner's story is truly one of perseverance in life, a trait he had already

offering them emotional and spiritual support.

"The tournament has grown into a really special event over the last four years and we are so happy to be awarding scholarships to help these students as they enter college," Dexter Gardiner said. "Everyone always has a great time getting to know each other on and off the court, celebrating our lives while honoring those we dearly miss, and enjoying a little friendly competition."

The Gersowitz Libo & Korek, P.C.

tion does fantastic work in the community and we are honored to be a part of this year's tournament."

The scholarships were awarded during a center court ceremony that took place just before the championship game at 3:30 PM on Sunday, August 16th. Over 2000 spectators were fed lunch as Chief of Staff to Bronx Borough President Ruben Diaz Jr., Camella Pinkney-Price, offered words of encouragement to the players, spectators, and the many families in attendance who had suffered the loss of

loved ones recently. Also on hand to speak out in support of the Gardiner Foundation was Washington Heights Assemblyman Adriano Espaillat and City Councilman Larry Seabrook.

Durand Scott, a 19 year old graduate of Rice High School, was one of the scholarship recipients. Scott will be attending The University of Miami on a basketball scholarship this year. While at Rice High School, he led his team to a New York State Championship and was named MVP in the New York State Tournament.

Another recipient was Ashley

las Academy. He graduated in the top half of his class and will be attending Morrisville State University in the Fall of '09. He has volunteered at the first Caribbean Baptist Church where he distributed food to the needy and also worked for the Boys & Girls Harbor of New York serving food to children. Wesley will be the first in his family to attend college.

Dexter Gardiner, along with friend and event organizer Alan Farrell, also took time to hand out trophies and plaques to a number of community members in attendance. A number of youth basketball teams and players were called to the court to receive

“The Gardiner Foundation does fantastic work in the community and we are honored to be a part of this year’s tournament.”

— JEFF S. KOREK

on some fantastic basketball competition, finds its heart in the community that comes out to support each other. In addition to the awarding of schol-



Hargrove, an 18 year old graduate of Fredrick Douglas Academy. Hargrove earned honors throughout her high school career and earned the most creative award from the Sister Empowerment Organization. She was also a member of the Future Business Leaders of America, where along with her peers, she organized fundraising events to benefit her school at the Phillips Community Development Center.

The final scholarship was awarded to Wesley Meyers. Meyers is an 18 year old graduate of Fredrick Doug-

trphies in recognition of their individual and team commitments to the value of hard work, perseverance, and sportsmanship. In an unexpected presentation, the entire Gersowitz Libo & Korek, P.C. family was recognized with a beautiful plaque in thanks for our support of the tournament. We were all touched by this wonderful gesture and the plaque will be hung with pride in our offices as a reminder of a great event and the fantastic work the Gardiner Foundation does beyond the tournament.

The tournament, although centered

arships and the crowning of a championship team, the Gardiner Foundation honored over a dozen families who are coping with the deaths of loved ones. Many members of these families gathered around center court for special recognition and to share each other’s grief, while celebrating the lives of those no longer with them. At Gersowitz Libo & Korek, P.C., we are all too familiar with the pain and suffering these families deal with on a daily basis and this is an important reminder of why we fight for our clients in the court of law.

7 WEEKS, 50 MINUTES OF DELIBERATION, \$5 MILLION VERDICT

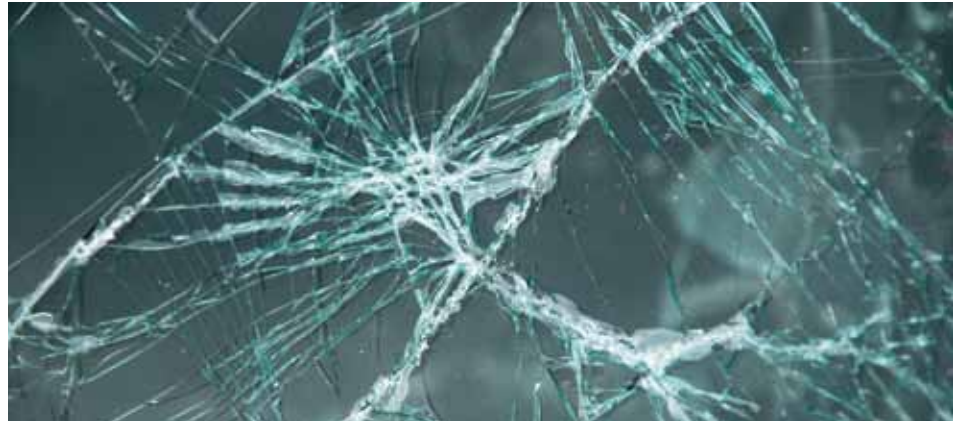
Connecticut CEO suffers Mild Traumatic Brain Injury

As the saying goes, accidents do happen. Unfortunately, when an automobile accident happens, the consequences can be life altering and far too often the person who suffers the worst repercussions is not the same person responsible for the accident.

David Goodwick, former CEO of Leverage Marketing Group of Connecticut, is one such person who had his life forever changed for the worse while riding in the backseat of a motor vehicle. As the vehicle Mr. Goodwick was travelling in went through the Lincoln Tunnel on June 4, 2003 – the vehicle he was in was hit by a tour bus causing Mr. Goodwick to suffer a closed head trauma that would lead to very serious and life altering complications.

The tour bus crashed into the vehicle carrying Mr. Goodwick from behind. Directly after the crash, Mr. Goodwick was in a dazed state according to two fellow passengers with Mr. Goodwick. As time passed over the following weeks and years, Mr. Goodwick's symptoms got worse, eventually causing him to be unable to work.

What started as a daze directly following the crash, developed into memory loss, confusion, and chronic headaches in the weeks following the crash. As the symptoms became worse, instead of better, Mr. Goodwick sought the help of a neurologist and it became clear that he suffered a mild traumatic brain injury (MTBI)



from the accident. Each year, 1.5 million Americans suffer an MTBI, resulting in 80,000 long term consequences and 50,000 deaths.

Mr. Goodwick's brain injuries resulted in a loss of important motor skills and reasoning skills which prevent him from performing the necessary activities for daily living. He was left unable to run his advertising business and manage his staff of 15 employees. As a result, Mr. Goodwick had no choice but to sell his company and give up his source of income.

Faced with the reality that he no longer possessed the necessary skills to hold a job, much less run his own company, Mr. Goodwick came to Gersowitz Libo & Korek, P.C. for help. Understanding the trauma he suffered as a result of the negligence of others, Jeff S. Korek and Stacey T. Sokol tried Mr. Goodwick's case in front of the Supreme Court of the State of New York, County of New York.

In court, Korek argued successfully on behalf of Mr. Goodwick and his family, presenting evidence that

despite years of cognitive therapy since the accident, Mr. Goodwick would never regain the essential skills lost due to the brain injury he suffered. The jury agreed and awarded Mr. Goodwick a total of \$5 million in damages for suffering the MTBI. The award was broken down into \$1 million for past pain and suffering, \$1 million for past lost earnings, \$1 million for future pain and suffering, and \$2 million for future lost earnings.

No one should ever be faced with a life of pain and the inability to participate in fundamental daily activities because of the negative actions of another person. Mr. Goodwick was severely injured because of the carelessness of another, resulting in an automobile accident that never should have happened. Gersowitz Libo, & Korek, P.C. are thankful we were able to ease some of Mr. Goodwick's pain with a victory in court.

This article has been published with the express written consent of our client David Goodwick.

OUR WINNING TEAM

Edgar Daniels has been with Gersowitz Libo & Korek, P.C. for 2 years. As a legal assistant, he works closely with the attorneys and staff, assisting them on a variety of legal matters. Edgar grew up in New York and Puerto Rico and presently resides in Brooklyn. An avid runner, Edgar ran the New York City Marathon in November.

Brielle Goldfaden joined the firm in September 2009 as an Associate. Brielle is a graduate of Boston University and obtained her law degree from Seton Hall University School of Law in May of 2009. As an associate member of Seton Hall's Circuit Review Law Journal, she authored a comment which was selected for publication. In the spring of 2009, Brielle participated in a juvenile justice clinic where she represented underprivileged adolescents in over thirty court proceedings. Prior to earning her J.D., Brielle was a legal assistant at a plaintiff's personal injury firm and was an intern for the Honorable Judge Eugene

Codey, the Presiding Judge of the Superior Court of New Jersey, Civil Division.

Annette Berrios has been with Gersowitz Libo & Korek, P.C. for over twelve years. As a bilingual Legal Assistant and No-Fault Case Manager, Annette puts her Criminal Justice Degree to work for our clients as she opens the first round of investigation into every file. No question is too difficult or unimportant for Annette. She spends time talking to clients and answering their questions, both in person and over the phone. As the wife of a New York City Police Detective, Annette understands how important it is to fight for the underdog. Annette is always willing to go above and beyond to achieve the best results for our clients.

[LEARN MORE AT LAWYERTIME.COM](http://LAWYERTIME.COM)



NEW YORK MAGAZINE 2009

GLK's Michael Fruhling Recognized for Taking On an Exceptional Case

Michael A. Fruhling was featured in New York Magazine's 2009 Personal Injury Exceptional Case section this past June.

The case involved a 44 year old man with HIV/AIDS related dementia who was a resident of a long-term care facility. After receiving dialysis treatment at a nearby hospital, the man was transferred back to the long-term care facility and left at the front desk unattended. The man disappeared. He was found dead on a park bench a week later having died from exposure and complications associated with his illness.



Gersowitz Libo & Korek, P.C. commenced a lawsuit on behalf of the man's family in Bronx Supreme Court. After a three week trial, the case settled after closing arguments but before the case was sent to the jury. Additionally, as a result of the hard work of Michael A. Fruhling, the facility agreed to change its internal procedures so that a nurse's aide would accompany patients suffering from dementia on trips outside of the facility.

According to Michael A. Fruhling, "This case in particular was very rewarding, as we were not only able to make a difference for our client's family, but for other patients at the long-term care facility. As part of the settlement, the facility agreed to change its internal policies."

Read the article online at <http://nymag.com/nymag/advertorial/personalinjury/57362/>

GLK COMMUNITY OUTREACH

Some of the organizations we are proud to be affiliated with:

American Jewish Congress
Craig Lensch Scholarship Fund
Southampton Hospital
The Gardiner Foundation
Helen Keller Services for the Blind
Immaculate Conception School
Judges and Lawyers Breast Cancer Alert
Hoops 4 Hope
Make a Wish Foundation
Memorial Sloan-Kettering Cancer Center

Maryhaven Center of Hope
National Reye's Syndrome Foundation
Autism Speaks
Revlon Run/Walk
Seeds of Peace Youth Center
Southern Poverty Law Center
Strang Cancer Prevention Center
The NYC Chapter of
Leukemia & Lymphoma Society
WORC Geraldo Rivera Tennis Classic

SETTLEMENTS & VERDICTS

Recent Wins from GLK

Motor Vehicle/Commercial Bus — A verdict in the amount of **\$5 million** was reached in New York County on behalf a 48 year old man who was a passenger in a motor vehicle which was rear ended by a commercial bus. As a result of the accident, our client suffered mild traumatic brain injury.

Medical Malpractice/Failure to Diagnose — A settlement during trial in the amount of **\$4.6 million** was reached in New York County on behalf of a 31 year old man whose doctors failed to diagnose him with toxoplasmosis. As a result, our client suffered a recurrence of toxoplasmosis as well as seizures and speech and cognitive delays.

Medical Malpractice/Legionnaire's Disease — A settlement in the amount of **\$2.5 million** was achieved in New York County on behalf of the family of a 42 year old woman who died after having been exposed to Legionnaire's disease while seeking treatment at a hospital for an unrelated condition.

Motor Vehicle/Illegal U-Turn — A settlement in the amount of **\$1.2 million** was reached in Middlesex County, New Jersey on behalf of a 49 year old man who sustained injuries after his vehicle was struck by a commercial vehicle which made an illegal u-turn into his lane of travel. Our client suffered a right thigh bone fracture and a right hip fracture as a result of the accident. Our client underwent three surgeries related to these injuries.

Train Accident — A settlement during trial in the amount of **\$975,000** was reached in Queens County on behalf of a 55 year man who was hit by a train as he attempted to disembark. Plaintiff suffered a below the knee amputation of his right leg as a result of the occurrence.

Medical Malpractice/Erbs Palsy — A settlement was reached in Kings County in the amount of **\$700,000** on behalf of an infant child who sustained a right brachial plexus injury, also known as Erbs Palsy, during birth.



Motor Vehicle — A settlement in the amount of **\$362,500** was reached in Orange County on behalf of a 37 year old woman who was seriously injured in a motor vehicle accident after another vehicle crossed over a double yellow line and collided with our client's vehicle. Plaintiff suffered 5 fractured ribs, a hip fracture and a right collapsed lung as a result of the accident.

Motor Vehicle/Pedestrian Knockdown — A settlement in the amount of **\$330,000** was reached in New York County on behalf of an 84 year old pedestrian in a crosswalk who was struck by a motor vehicle which improperly made a left turn. The woman suffered a fractured ulna as a result of the accident and had to undergo surgery to repair injuries to her right elbow.

Motor Vehicle/Commercial Vehicle — A settlement in the amount of **\$200,000** was reached in Kings County on behalf of a 24 year old building manager who was struck by a commercial truck which ran through a red light. Our client suffered a fractured arm and a fractured jaw bone which required surgical placement of an implant.

LawUpdate

News from Gersowitz Libo & Korek, P.C.

111 Broadway, 12th Floor
New York, NY 10006

PRSR STD
U.S. Postage
PAID
Century Direct

FREQUENTLY ASKED QUESTIONS

of Gersowitz Libo & Korek, P.C.

Will I have to go to Court?

Possibly you will – but not necessarily. Nearly all cases are settled out of court, sometimes during a trial, often before it begins.

Why do you so frequently win favorable settlements?

Because we always deal from strength, never from weakness. We're always prepared to go to trial. The defendant knows about our years of experience and, sooner or later, understands how well prepared we are. There is no guarantee, of course, but at the right point a favorable settlement becomes more likely.

Why can't my other lawyers handle my case?

They know that the practice of our firm is focused entirely on personal injury law, on recovering damages for people who are harmed because of someone else's negligence. Lawyers know our reputation

and our record of success. They have confidence that we will serve you well. Gersowitz Libo & Korek, P.C. has a wide reputation as lawyers' lawyers. They look to us for this work alone. You look to them for all your other legal needs.

Will I have to take the witness stand? Will the other lawyer attack me and try to break me down in cross examination?

Please understand: you are the victim in this case, and we will represent you. The process of winning compensation for what has been done to you should not be painful, and, for the vast majority of plaintiffs-it is not. Courtroom dramas on television are not real life. They are exaggerated for dramatic effect. Even actual televised trials are most often selected because they are sensational. In actuality, there is a plaintiff, a defendant, a judge and usually a jury in the courtroom. If the case is tried, the judge and jury are sworn

to do what is right. Jurors are people like you, and they do not like lawyers abusing witnesses.

Can I afford your services?

You certainly can. We work on a contingency basis. What that means, in simple terms, is you pay no legal fees unless you win an award, either through settlement or trial. We make the full investment of money and time to win justice for you. If we succeed on your behalf, we are paid a percentage of the award-and that sum is regulated by Court rule. We are also reimbursed for our expenses. What is most important is this: We have never lost a case for lack of money or professional time, and we never will.

Suppose I've been referred by another lawyer or law firm. Does that mean my case is going to cost me more money?

Absolutely not! Many of our clients are referred to us by other lawyers. It is these lawyers who pay our fee.

For more information, visit:

LAWYERTIME.COM