

**Panel Affirms Mistrial Based
On One Mention of Insurance**

A trial court properly granted a mistrial in a medical malpractice action after an expert witness for the plaintiffs mentioned he was a risk management consultant for an insurance company. The defendant doctor, Mohammed Nizam, who was accused of performing an unnecessary hysterectomy, successfully moved for the answer to be struck. However, during deliberations, the jury asked if an insurer would cover any damages. "I can't tell you that," Suffolk County Supreme Court Justice Jeffrey Spinner answered. "I don't know."

The jury awarded Diane and Edward Grogan \$350,000, and Justice Spinner granted a mistrial on the basis of the single mention of insurance. Last week, the Appellate Division, Second Department, affirmed. "Evidence of insurance on the part of a defendant in a medical malpractice action is inadmissible," the panel held. "Under the circumstances, the trial court providently exercised its discretion in granting that branch of the defendants' motion which was for a mistrial. Although there was only the one mention of insurance by the plaintiffs' expert, it cannot be said that this one instance did not have an influence on the jury." *Grogan v. Nizam*, 08-1181, appears on page 29.