

**IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

**GIBSON BROS., INC., et al.,**

vs.

**OBERLIN COLLEGE aka OBERLIN  
COLLEGE AND CONSERVATORY,  
et al.,**

Defendants.

CASE NO. 17CV193761

JUDGE JOHN R. MIRALDI

MAGISTRATE: HON. JOSEPH BOTT

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO  
CONTINUE THE HEARING ON ATTORNEYS' FEES**

Plaintiffs hereby respond to Defendants' *Motion To Continue The Hearing On Attorneys' Fees Or, In The Alternative, Motion for Expedited Discovery*. For the reasons stated herein, Defendants' Motion should be denied so that the attorneys' fees hearing can proceed as scheduled on July 10, 2019.

The jury returned a compensatory damages verdict in favor of Plaintiffs on June 7, 2019. On June 13, the jury returned a punitive damages verdict against the Defendants and completed interrogatories identifying that Plaintiffs are entitled to attorneys' fees. Therefore, Defendants cannot be surprised to learn that an attorneys' fees hearing has been scheduled to occur (on July 10) nearly a month after the verdict.

Likewise, Defendants cannot claim undue prejudice or surprise as to the scope of the work performed by Plaintiffs' counsel throughout the case. Defendants observed, first-hand, the scope of legal work involved in this case. Obviously, Defendants' counsel was involved in much of it, including but not limited to: preparation and attendance at depositions, hearings, and trial; written discovery; compilation and review of substantial e-discovery; and preparation of voluminous motions, responses, and replies.

So that the hearing can proceed on July 10, Plaintiffs agree to identify witnesses for the hearing on July 5. Plaintiffs will also identify their expert witness on July 5 and further expect to be able to produce their expert's report by the end of the day Friday (July 5), as well. To further place Defendants on notice of the requested award in advance of the hearing, Plaintiffs intend to seek a lodestar multiplier of 2-3x counsel's hourly fees, resulting in an award range of \$9-13 Million plus expenses.

Plaintiffs will also provide the documents they plan to utilize in support of the requested award by the end of the day Friday (July 5). Plaintiffs will therefore exchange Plaintiffs counsel's billing statements with Defendants, assuming that Defendants' counsel produces *their* billing statements by July 5 in compliance with previously-served subpoenas. To the extent that Defendants challenge the number of hours reasonably expended and/or the reasonable hourly rate of Plaintiffs counsel's services,<sup>1</sup> it stands to reason that the number of hours performed by Defense counsel *in the same case* and their hourly rates are relevant.

To alleviate any contention by Defendants that production of such billing records is subject to attorney-client privileged communications or work-product confidentiality,

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<sup>1</sup> Pursuant to Rule 1.5 of the Rules of Professional Conduct, "the time and labor required" and "the fee customarily charged in the locality for similar legal services" are among the factors to consider in determining reasonableness of fees and expenses.

Defendants or their counsel may redact any description of work performed from such records and merely produce: (a) the hourly rates of those who worked on the matter; (b) the total hours of work performed; (c) the total amount of fees and expenses charged; and (d) the total amount of fees and expenses paid to date.

At the conclusion of their Motion, Defendants use the standard refrain that their “Motion is not made for purposes of delay...” In reality, Defendants’ Motion (like so many others before it) has only been filed for purposes of delay. In a post-verdict statement to the public, Oberlin College President Carmen Twillie Ambar warned of such delays:

To: Members of the Oberlin Community  
From: President Carmen Twillie Ambar  
Subject: Understanding Yesterday’s Legal News  
Date: June 14, 2019

Dear Members of the Oberlin Community,

By now many of you will have heard about the latest development in the Gibson’s Bakery lawsuit, a jury’s declaration of punitive damages against Oberlin. **Let me be absolutely clear:** This is not the final outcome. **This is, in fact, just one step along the way of what may turn out to be a lengthy and complex legal process.** I want to assure you that none of this will sway us from our core values. It will not distract, deter, or materially harm our educational mission, for today’s students or for generations to come.

There is no basis for the delay that Defendants seek. For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants’ Motion and proceed with the scheduled hearing on July 10, 2019.

Respectfully submitted,

s/ Owen J. Rarric

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## **PROOF OF SERVICE**

A copy of the foregoing was served on July 3, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the email addresses identified below, to:

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