IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON'S BROS., INC. *et al.*,	**CASE NO. 17CV193761**
Plaintiff,	**JUDGE JOHN MIRALDI**
v.	**LEXINGTON INSURANCE COMPANY'S MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF SUBMITTING JURY INTERROGATORIES AND INSTRUCTIONS AND APPLICATION TO SHORTEN TIME FOR BRIEFING AND RULING ON MOTION TO INTERVENE**
OBERLIN COLLEGE, *et al.*,	
Defendants.	

Pursuant to Ohio Civil Rules 24(A) and 24(B), Lexington Insurance Company ("Lexington") respectfully moves this Court for an order allowing it to intervene in this suit for the limited purpose of submitting Jury Interrogatories and Instructions. Further, and pursuant to Local Rule 9(III), Lexington respectfully moves this Court for an order shortening time for the briefing and ruling on its motion to intervene. Lexington's motion and application is supported by the Memorandum in Support, attached Affidavit of Patrick Fredette, attached Proposed Intervenor's Complaint, Proposed Jury Interrogatories and Proposed Jury Instructions.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Lexington issued a Commercial Umbrella Liability policy that potentially provides coverage to defendants Oberlin College aka Oberlin College and Conservatory ("Oberlin") and Meredith Raimondo for certain damages in this action. Lexington seeks intervention in this action for the limited purpose of submitting interrogatories to the jury in order to determine facts at issue in this action that would impact coverage under its policy.

The Lexington policy does not provide coverage for "bodily injury" or "property damage" intentionally caused by defendants. While the Lexington policy potentially provides coverage in relation to "personal and advertising injury," defined to include defamation and/or disparagement in certain circumstances, the Lexington policy excludes any such coverage if "personal and advertising injury" is caused "with the knowledge that the act would violate the rights of another...," or if the insured published material it knew to be false. Further, the Lexington policy provides coverage for punitive damages insurable by law, but only where the corresponding award of compensatory damages is also covered by the Lexington policy.

In this action, plaintiffs Gibson Bros., Inc., Allyn Gibson, and David Gibson allege that defendants Oberlin and Ms. Raimondo published material that falsely characterized the bakery owned by plaintiffs ("Gibson's") as being a racist establishment. While such allegations potentially implicate "personal and advertising injury," plaintiffs also alleged that the statements were published with malice, were intended to injure plaintiffs' business reputation, and were part of a purported campaign to harm plaintiffs. If it is established that the defendants knew the alleged statements were false, or if the defendants knew their alleged acts would violate plaintiffs' rights, the Lexington policy would exclude coverage for any resultant damage. Thus, Lexington seeks to intervene in order to submit jury interrogatories to determine the extent of the defendants' knowledge in relation to the alleged publications.

Further, the Lexington policy provides coverage for punitive damages only when the punitive damages are assessed relative to covered compensatory damages. Here, plaintiffs seek punitive damages for the claims of libel, tortious interference with contract, tortious interference with business, intentional infliction of emotional distress, and trespass. Only the libel claim is potentially embraced by the Lexington policy. Thus, Lexington seeks to intervene in order to

submit jury interrogatories and instructions to determine what punitive damages, if any, correspond to each cause of action.

Lexington has a right to intervene under Rule Civ. P. 24(A) because it has an interest in the subject of the action, as Lexington may ultimately be liable to indemnify, in part, any resulting judgment in this action, if covered under its policy. Further, Lexington's interests are not adequately represented by the existing parties because neither plaintiffs nor defendants have an interest in establishing that there is no coverage for the libel claim. Nor do the parties have any interest in allocating a potential punitive damage award in relation to covered or uncovered claims. Lexington's motion is also timely based on Lexington's ongoing communications with the defendants on submittal of jury interrogatories and instructions, and defendants' recent failure to reveal their position on the subject with Lexington. Further, the intervention proposed through this motion is highly limited, and no delay or prejudice will result.

In particular, Lexington affirmatively requested on several occasions that the defendants submit jury interrogatories and instructions as proposed through this motion. Lexington also inquired as to when proposed jury interrogatories and instructions were due, and was informed on April 27, 2019 by defense counsel for Oberlin and Ms. Raimondo that there was currently no deadline set by the Court and that the deadline would probably be several weeks away. Lexington advised the defendants that Lexington understood the defendants would adopt Lexington's request to submit jury interrogatories and instructions as outlined by Lexington. On April 27, 2019, the defendants responded that they would inform Lexington of their position on April 29, 2019. Defendants did not inform Lexington on April 29, 2019 as represented and, as such, Lexington is acting out of an abundance of caution in the form of this motion, as Lexington

remains uncertain of defendants' position, despite repeated communications and requests by Lexington.

Independent of the foregoing, Lexington should be granted intervention permissively under Rule Civ. P. 24(B) because the determination of coverage under the Lexington policy shares common questions of fact with this action, and no undue delay or prejudice to the existing parties will result.

II. BACKGROUND

A. Claims in This Action

On November 7, 2017, plaintiffs filed a complaint against Oberlin and Meredith Raimondo, Oberlin's Vice President and Director of Students, captioned *Gibson, et al. v. Oberlin College a/k/a Oberlin College and Conservatory,* Lorain County Court of Common Pleas, Case No. 17CV193761 ("lawsuit").

The complaint seeks compensation for defendants' alleged interference with Gibson's following a claimed attempt by Oberlin students to purchase alcohol with false identification.

More specifically, plaintiffs allege three African-American Oberlin students attempted to buy alcohol at Gibson's with false identification on November 9, 2016. (Compl. ¶ 22). The incident resulted in a physical altercation with Allyn W. Gibson, which defendants allegedly maintained was racially motivated. (*Id.* at ¶ 35). Thereafter, defendants purportedly encouraged students and the community to boycott Gibson's. (*Id.* at ¶ 37).

As part of its purported campaign against Gibson's, Oberlin employees and students allegedly protested outside the bakery and purportedly circulated flyers accusing Gibson's of being a racist establishment and encouraged the public to "shop elsewhere." (*Id.* at ¶ 38). The complaint alleges that similar posters were displayed in Oberlin's Student Union. (*Id.* at ¶ 48). The complaint further alleges that defendants forced Bon Appetit Management Company ("Bon

Appetit"), one of the college's food service contractors, to cancel its contract with Gibson's. (*Id.* at ¶ 57).

Plaintiffs allege that the Oberlin Police Department explained to Oberlin that out of the 40 adults arrested at the bakery, only six were African-American. (*Id.* at ¶ 51). The complaint claims Oberlin consciously ignored these facts and acted with "intentional disregard of the truth" in continuing to publicly maintain that Gibson's is a racist establishment. (*Id.* at ¶ 52).

Based on these allegations, among others, plaintiffs seek to recover compensatory and punitive damages from Oberlin and Ms. Raimondo for the following remaining claims: libel, tortious interference with business relationships, tortious interference with contract, intentional infliction of emotional distress ("IIED"), and trespass.[1]

B. Lexington's Coverage Position

After tender of the lawsuit, Lexington informed the defendants that the Lexington policy did not respond to certain claims in the lawsuit. In particular, based on the claims that remain in the lawsuit, Lexington advised that the Lexington policy only potentially responds to the libel claim, but that the Lexington policy is excess to other insurance provided through a commercial general liability policy issued by College Risk Retention Group, Inc. ("CRRG") and an Educator's Liability policy issued by United Educators ("UE") in relation to the libel claim.

Lexington further advised that the Lexington policy only embraces punitive damages when assessed relative to covered compensatory damages that implicate the Lexington layer of coverage. (Affidavit of Patrick Fredette ("Fredette Aff."), ¶ 3). In this regard, Lexington's coverage, if any, is also excess to the UE policy not simply for any covered liability arising out

---

[1] The complaint also brought claims for slander and deceptive trade practices, however, the Court granted Oberlin and Ms. Raimondo summary judgment in their favor relative to these claims. Further, the claim for negligent hiring does not seek punitive damages.

of the libel claim, if any, but also any covered punitive damage award, subject to the $1 million cap in the UE policy for such damages. (*Id.*).

On April 16, 2019, Lexington issued a supplemental reservation of rights letter. (*Id.* at ¶ 4). In addition to again advising defendants that certain claims are not embraced by the Lexington policy, Lexington requested that defendants submit jury interrogatories to delineate the basis of any finding of liability with respect to the various claims, including the basis of any damage award relative to each claim. (*Id.* at ¶5). On April 24, 2019, Lexington again wrote to the defendants regarding the need for jury interrogatories relating to the same subject matter. Lexington also offered in both communications to work with the defendants to prepare jury interrogatories and instructions. (*Id.* at ¶ 6). The defendants did not respond to either letter. (*Id.* at ¶ 7).

Having received no assurance that the requested jury interrogatories would be submitted, Lexington wrote to defense counsel on April 27, 2019. (*Id.* at ¶ 8). Defense counsel responded that the Court had not set a date for submitting jury interrogatories and that the date would probably be at least several weeks away. (*Id.* at ¶ 9). Defense counsel advised that defendants would provide their position regarding Lexington's request to submit the requested jury interrogatories and instructions on April 29, 2019, but no further correspondence followed. (*Id.* at ¶ 10). Having received no response from the defendants, either through defense counsel or their coverage counsel, Lexington filed the instant motion. (*Id.*).

III. LAW AND ARGUMENT

A. Lexington is Entitled to Intervention as of Right in Order to Submit Jury Interrogatories

1. *Lexington Has an Interest in the Subject of this Action That is Not Adequately Represented*

Rule 24 of the Ohio Rules of Civil Procedure permits intervention, and provides as follows in relevant part:

> (A) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action...when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Civ. R. 24 is to be afforded "liberal construction...in favor of intervention." *State ex rel. v. Frost*, 74 Ohio St.3d 107, 108 (1995).

The burden of showing that the applicant's interests are not adequately represented by the existing parties is minimal. The burden is met if the applicant shows that representation of its interests "may" be inadequate. *See Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)[2]; *Bush v. Viterna*, 740 F.2d 350 (5th Cir. 1984); *Anguine, Ltd. v. United States Dept. of Interior*, 736 F.2d 1416 (10th Cir. 1984). "Civ. R. 24, providing for intervention of right, protects applicants whose interest may be practically impaired as well as legally impaired...." *Sears, Roebuck & Co. v. J-Z Realty Co.*, 1975 WL 182026, at *2 (Ohio Ct. App. 1975); *see also Steinberg v. Shearson Hayden Stone, Inc.*, 598 F. Supp. 273 (D. Del. 1984) (any "practical impairment" of the intervenor's ability to protect its interests may give it a right to intervene).

---

[2] Although some cases cited interpret Fed. R. Civ. P. 24, rather than the Ohio rule, the two rules are almost identical and thus judicial construction of the federal rule is informative. *See Olynyk v. Scoles*, 114 Ohio St. 3d 56, 61 (2007) (cases interpreting a federal rule are informative in relation to a similar Ohio rule).

Lexington has "an interest relating to the property or transaction which is the subject of th[is] action," because it may be obligated to indemnify, in part, a verdict against Oberlin and Ms. Raimondo, its insureds. However, any potential coverage under the Lexington policy turns on certain specific findings. First, if defendants knew the alleged defamatory statements were false, or if defendants knew that their alleged actions would violate the rights of plaintiffs, there is no coverage for the libel claim. Here, the complaint contends the alleged defamatory statements were "published with malice and were intended to injure Plaintiffs' business reputation." It is further alleged that defendants consciously ignored the purported fact that the Oberlin Police Department explained to defendants that out of the 40 adults arrested at the bakery, only six were African-American. Thus, plaintiffs claim defendants acted with "intentional disregard of the truth" in allegedly maintaining that Gibson's is a racist establishment. To the extent true, then coverage would be excluded under the Lexington policy. While plaintiffs' allegations suggest coverage may potentially be excluded, the parties to the lawsuit are unlikely to protect Lexington's interests in making that determination, as doing so would also establish that there is no coverage for the libel claim.

Further, the Lexington policy only responds to punitive damages if assessed relative to covered compensatory damages that implicate the Lexington layer of coverage. A general verdict for punitive damages would not delineate which claim or claims the jury believed warranted punitive damages. The claims for tortious interference, IIED and trespass are not embraced by the Lexington policy, and thus a punitive damages award based on any of these claims would not be covered by the Lexington policy.

Moreover, UE provides $1,000,000 in primary coverage for punitive damages where insurable by law. A general verdict would likely not delineate whether Oberlin or Ms.

Raimondo was being assessed punitive damages for their own alleged malicious conduct, or because Oberlin or Ms. Raimondo "authorized, participated in, or ratified actions or omissions by" their agents whose acts or omissions "demonstrate actual malice or egregious fraud." *Est. of Beavers v. Knapp*, 889 N.E.2d 181, 194 (Ohio Ct. App. 2008). Unlike a punitive damage award based on the latter, which is potentially covered under the UE policy, *The Corinthian v. Hartford Fire Ins. Co.,* 758 N.E.2d 218, 223 (Ohio App. 8th 2001), punitive damages assessed based on alleged malicious conduct is not insurable under Ohio law. *See* O.R.C. § 3937.182(B); *Stephens v. Grange Mut. Ins. Co.*, 2012-Ohio-4980, ¶ 28 (Ohio Ct. App. 2012) ("Punitive damages are not insurable, and the use of insurance proceeds to satisfy an award of punitive damages is against public policy"). The parties are unlikely to determine whether any punitive damage award – if any – is the result of any defendants' own alleged malicious conduct or that of its purported agents. However, the issue is germane to Lexington and UE, as it would relate to determining priority of coverage, if any, between the UE and Lexington policies.

Ohio courts have held that similar interests asserted by insurers warrant intervention to ascertain whether various claims and potential damages would be covered under the insurer's policy. *See, e.g., Alhamid v. Great Am. Ins. Co.*, 2003-Ohio-4740, ¶17 (Ohio Ct. App. 2003) ("[t]he most reasonable opportunity to determine the extent of coverage issue…is during this trial through the simple submission of jury interrogatories"); *Nationwide Ins. Co. v. Phelps*, 2004-Ohio-1200, ¶¶5, 13-15 (Ohio Ct. App. 2004).

Schmidlin v. D & V Enterprises, 2000 WL 709039 (Ohio Ct. App. 2000), is instructive. In *Schmidlin*, the insurer, Great Midwest Insurance Co. ("Great Midwest"), sought intervention for the limited purpose of submitting jury interrogatories under similar circumstances. *Id.* at *2. The trial court denied Great Midwest's motion, but the Court of Appeals reversed the trial

court's decision. The Court of Appeals rejected the argument that the purpose of Great Midwest's intervention was not limited because the insurer reserved the right to seek a declaratory judgment with respect to the applicable limit of liability: "Reserving the ability to request appropriate declaratory relief after the trial was over is not inconsistent with the limited scope of intervention sought by Great Midwest." *Id.*

The court further concluded, "The extent of Great Midwest's financial exposure, if any, would depend on the legal basis upon which Schmidlin obtained a verdict against the D & V defendants." *Id.* The court then stated, "*That question could be answered only by this jury.* Under analogous circumstances, the court in *Peterman v. Pataskala* (1997), 122 Ohio App.3d 758, found intervention appropriate 'due to the fact that appellants have no other method, available to them, to protect their interests. Such circumstances favor intervention.'" *Id.* at *5. (Emphasis added).

Moreover, if Lexington were prevented from intervening in the lawsuit, it could potentially be prejudiced by the effects of collateral estoppel. In *Howell v. Richardson*, 45 Ohio St. 3d 365, 367-68 (1989), the Supreme Court of Ohio considered the necessity of an insurer intervening to preclude relitigation of issues, such as a tortfeasor's mental state. The *Howell* court noted:

> The insurance company may legitimately decline to defend where it believes in good faith that its insured acted intentionally. It may nevertheless enter the action and participate as a third-party defendant so as to defeat any liability on its part (i.e., by demonstrating that the acts of the insured/tortfeasor were intentional.) It is this opportunity that must be seized. Otherwise, whether seized or not, the opportunity to litigate in the original matter will preclude relitigation of liability in the supplemental proceeding.

Id. at 367-68. *See also Grange Mut. Cas. Co. v. Uhrin*, 49 Ohio St.3d 162 (1990). ("Where a determination is made in an action instituted against a tortfeasor relative to his

culpable mental state, collateral estoppel precludes relitigation of the determination in a supplemental proceeding brought against his insurer pursuant to R.C. 3929.06").

For these same practical reasons, Lexington is entitled to intervene in this suit. Allowing Lexington to do so would efficiently address coverage issues relating to defendants' intent, as well as gain clarity regarding the source and basis of any potential punitive damage award. *See Tomcany v. Range Const.*, 2004-Ohio-5314, ¶ 34 (Ohio Ct. App. 2004) ("If appellant would be permitted to intervene, appellant could submit jury instructions enabling it to ascertain whether any potential damages would be covered under the relevant insurance policy, and appellant's intervention would thus add an element to the proceeding which would not exist absent its intervention").

2. *While Lexington has Discharged its Obligation, Lexington's Motion is Otherwise Timely*

Lexington has discharged its duty under Ohio law regarding notification to the insured to allocate covered verses non-covered exposure. Under Ohio law, "an insured has the burden to prove entitlement to coverage, including the burden of allocating a prior general award into covered and noncovered claims, but that where an insurer has a duty to defend the insured and fails to seek an allocated verdict or *advise the insured of the need for one*, the burden shifts to the insurer." *World Harvest Church v. Grange Mut. Cas. Co.*, 2013-Ohio-5707 (Ohio Ct. App. 2013) (rev'd on other grounds) (emphasis added).

Lexington has properly and fully complied with *World Harvest.* In particular, Lexington has – on at least three separate occasions – specifically advised the defendants regarding the significant need for jury interrogatories to help define covered exposure and the potential ramifications if no allocation is sought. (Fredette Aff., ¶¶ 8-10). *See id.* ("If Grange truly believed that intervening in the case to submit special interrogatories would have compromised

WHC and its employee's ability to advance their agreed upon joint defense, *Grange or its provided counsel could have still discharged any duty by precisely advising WHC of the need for an allocation of the damages and the consequences of not obtaining one*") (emphasis added).

Not only has Lexington specifically advised defendants of coverage limitations with regard to a general verdict and requested that defendants submit jury interrogatories, Lexington was under the belief that the defendants would comply with Lexington's request, as Lexington was never advised otherwise. Lexington was eventually advised by defense counsel that a response to Lexington's numerous requests would arrive on April 29, 2019, however, only silence followed. Thus, Lexington has been forced to undertake the instant motion.

"Whether a Civ. R. 24 motion to intervene is timely depends on the facts and circumstances of the case. The following factors are considered in determining timeliness: (1) the point to which the suit had progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention." *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d, 501 503 (1998) (citations and punctuation omitted).

While the lawsuit has proceeded to trial, intervention is sought for the limited purpose of submitting jury interrogatories. Here, *Schmidlin, supra*, continues to be informative and indicates Lexington's motion is timely. In *Schmidlin*, Great American filed its motion two weeks before the trial was to begin. While the trial court found the motion untimely, the court of appeals reversed, finding "there is no indication that Great Midwest's limited participation would

have caused any substantive prejudice to the parties." *See also Tomcany, supra,* at ¶ 44 ("There is no reason to think that this matter could not have proceeded to trial as scheduled, with appellant's participation limited to that which it requested, or that appellant's participation would have prejudiced the parties").

No prejudice to the parties will result from the intervention here because Lexington seeks intervention only to submit interrogatories to the jury in relation to facts the parties have developed, or will develop, at trial. Indeed, defense counsel indicated the deadline for jury interrogatories has not been set and thus has not passed. In short, no delay will result. *Tomcany, supra,* at ¶ 46 ("[p]ermitting narrow intervention in the instant matter was the only practical means to allow these legal claims to be decided efficiently and consistently and without extreme prejudice to appellant"). Moreover, any perceived delay – however absent – is only a consequence of Lexington's reliance on the defendants in relation to Lexington's repeated requests for the submittal of jury interrogatories and instructions. Because Lexington's motion is timely in the context of this action, and based on Lexington's efforts and belief the defendants – as insureds – would act as requested by Lexington – no prejudice to the parties will result, and Lexington is entitled to intervene under Rule Civ. P. 24(A).

B. In the Alternative, Lexington Should be Allowed Permissive Intervention Under Rule Civ. P. 24

In addition to allowing for intervention as of right, Rule 24 of the Ohio Rules of Civil Procedure states:

> (B) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action...when an applicant's claim or defense and the main action have a question of law or fact in common....In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

As discussed above, there are common questions of fact that underpin both the lawsuit and a determination of coverage under the Lexington policy. In particular, plaintiffs allege defendants intentionally disregarded the truth in making defamatory statements. Further, plaintiffs seek punitive damages for uncovered claims as well as for Oberlin's purported malicious acts. Damages assessed against Oberlin on either basis are not covered by the Lexington policy. Further, because Lexington seeks intervention for the limited purpose of submitting jury interrogatories, there will be no undue delay or prejudice to the adjudication of the rights of the original parties. *Schmidlin,* 2000 WL 709039 at *5 ("its intervention would not cause any delay or disruption of the existing trial proceedings, its participation at trial would be limited to submitting jury interrogatories and/or jury instructions, and no apparent prejudice would result from granting such limited intervention"). Thus, Lexington should be allowed to intervene permissively in the unfair trade action.

C. Good Cause Exists to Shorten the Time for Briefing and Ruling on the Motion to Intervene

Pursuant to Local Rule 9(II), an opposition brief, if any, is due within fourteen days of the motion. (*See* L.R. 9(II)). Thereafter, the motion is submitted for ruling. (*Id.*). However, the jury trial in this matter began on May 1, 2019. Thus, the Court may not have occasion to rule on the motion to intervene prior to the jury's verdict.

Pursuant to Local Rule 9(III), the Court may modify time periods set forth by the Local Rules "for good cause shown, upon written application by either party or upon the Court's own motion." (*Id.*). Lexington respectfully submits good cause exists to modify the fourteen day briefing schedule based on the reasons explained above. In particular, Lexington has been diligent in its efforts to request defendants submit jury interrogatories on these subjects and acted as quickly as possible when it became apparent defendants might not cooperate with Lexington's

request. (Fredette Aff. ¶¶ 8-10). Further, the deadline for submitting jury interrogatories has not yet passed. *See, e.g., Roberts v. State of Ohio*, 1976 WL 190113, at *2 (Ohio Ct. App. 1976). ("'Good cause' is a very flexible, equitable term. In large measure, what constitutes 'good cause' depends upon the circumstances").

IV. CONCLUSION

For the foregoing reasons, Lexington respectfully moves the Court to allow Lexington to intervene for the limited purpose of submitting interrogatories to the jury in this action. Lexington further respectfully requests that the Court shorten time for the briefing and ruling on the motion so that Lexington can be permitted to timely submit jury interrogatories.

Respectfully submitted,

Patrick Fredette (0080523)
Jennifer Paonessa (0083014)
Christopher Ryan (0084607)
McCormick Barstow LLP
312 Walnut Street, Suite 1050
Cincinnati, Ohio 45202
Telephone: (513) 762-7520
Fax: (513) 762-7521
patrick.fredette@mccormickbarstow.com
jennifer.paonessa@mccormickbarstow.com
christopher.ryan@mccormickbarstow.com

CERTIFICATE OF SERVICE

The undersigned counsel for Lexington Insurance Company, hereby certifies that a copy of the foregoing was served U.S. Mail on this 1st day of May, 2019, to the following:

Lee E. Plakas
Brandon W. McHugh
Jeananne M. Ayoub
TZANGAS PLAKAS MANNOS LTS.
220 Market Avenue South
Eighth Floor
Canton, OH 44702
Attorneys for Plaintiffs

Terry A. Moore
Owen J. Rarric
Matthew W. Onest
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, OH 44735-6963
Attorneys for Plaintiffs

Ronald D. Holman, II
Julie A. Crocker
William A. Doyle
Cary M. Snyder
Josh M. Mandel
TAFT STETTINIUS & HOLLISTER LLP
200 Public Sq., Suite 3500
Cleveland, OH 44114
Attorneys for Defendants

Matthew W. Nakon
Richard Panza
Malorie A. Alverson
WICKENS HERZER PANZA COOK & BATISTA
35765 Chester Road
Avon, OH 44011-1262
Attorneys for Defendants

One of the attorneys for Lexington Insurance Company

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON'S BROS., INC. et al.,	**CASE NO. 17CV193761**
Plaintiff,	**JUDGE JOHN MIRALDI**
v.	**AFFIDAVIT OF PATRICK FREDETTE IN SUPPORT OF LEXINGTON INSURANCE COMPANY'S MOTION TO INTERVENE**
OBERLIN COLLEGE, et al.,	
Defendants.	

NOW COMES Affiant, Patrick Fredette, and having been duly sworn, states as follows:

1. I am an adult who is competent to make this affidavit and I have first-hand knowledge of the facts set forth herein.

2. I am an attorney at the law firm of McCormick Barstow LLP, coverage counsel for Lexington Insurance Company ("Lexington") with respect to the action, *Gibson et al. v. Oberlin College a/k/a Oberlin College and Conservatory,* Lorain County Court of Common Pleas, Case No. 17CV193761 ("lawsuit").

3. Lexington corresponded with Oberlin and Ms. Raimondo on various occasions, including to advise of certain coverage limitations. In this regard, Lexington advised that the Lexington policy only embraces punitive damages when assessed relative to covered compensatory damages. Lexington further advised that its coverage, if any, is also excess to the UE policy not simply for any covered liability arising out of the libel claim, if any, but also any covered punitive damage award, subject to the $1 million limit in the UE policy for such damages.

4. On April 16, 2019, I sent a letter on behalf of Lexington to Thomas Bick, coverage counsel for Oberlin College and Conservatory ("Oberlin").

5. In addition to again advising defendants that certain claims are not covered by the Lexington policy, the April 16, 2019 letter advised the defendants of the importance of submitting jury interrogatories to delineate the basis of any finding of liability with respect to the various claims, including the basis of any damage award relative to each claim. The April 16, 2019 letter also informed defendants that Lexington would work with the defendants to prepare jury interrogatories that addressed the subject matter Lexington contemplated.

6. On April 24, 2019, I sent another letter on behalf of Lexington to Mr. Bick regarding the need for jury interrogatories relating to the claims and damages, as well as coverage limitations, and explained again the importance of them for purposes of the defendants and their potential claims for coverage under the Lexington policy, as well as the policies of other involved insurers. The April 24, 2019 letter again informed the defendants that Lexington would work with the defendants to prepare the jury interrogatories.

7. I did not receive a response to either letter.

8. On April 27, 2019, I wrote to defense counsel for Oberlin, Ron Holman, regarding the need for Oberlin and Ms. Raimondo to submit jury interrogatories in the lawsuit relative to the claims and damages, as well as coverage limitations. My April 27, 2019 email also informed Mr. Holman that Lexington understood that the defendants would adopt Lexington's various requests on the subject, as the defendants never objected or otherwise responded to Lexington's various requests.

9. Mr. Holman advised me on April 27, 2019, that the Court had not set a date for submitting jury interrogatories but that the date would probably be at least several weeks away.

10. Mr. Holman further advised me on April 27, 2019, that the defendants appreciated Lexington's communications, and represented that the defendants would advise of their position

regarding Lexington's request to submit jury interrogatories on Monday, April 29, 2019, but no further correspondence followed.

11. Because the defendants did not further respond to Lexington's repeated requests, on May 1, 2019, I informed counsel for Oberlin and Ms. Raimondo that Lexington would be filing the instant Motion to Intervene.

12. Upon receiving the consent of Oberlin and Ms. Raimondo, Lexington will make available to the Court the communications referenced above in each of the separate paragraphs.

13. This Affidavit is made in support of Lexington's Motion to Intervene.

FURTHER AFFIANT SAYETH NAUGHT.

PATRICK FREDETTE

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Sworn to and subscribed before me this 1st day of May, 2019 by the foregoing Affiant, who did swear or affirm it was her true act and deed.

NOTARIAL SEAL STATE OF OHIO

Christopher Michael Ryan, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

NOTARY PUBLIC

CERTIFICATE OF SERVICE

The undersigned counsel for Lexington Insurance Company, hereby certifies that a copy of the foregoing was served U.S. Mail on this 1st day of May, 2019, to the following:

Lee E. Plakas
Brandon W. McHugh
Jeananne M. Ayoub
TZANGAS PLAKAS MANNOS LTS.
220 Market Avenue South
Eighth Floor
Canton, OH 44702
Attorneys for Plaintiffs

Terry A. Moore
Owen J. Rarric
Matthew W. Onest
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, OH 44735-6963
Attorneys for Plaintiffs

Ronald D. Holman, II
Julie A. Crocker
William A. Doyle
Cary M. Snyder
Josh M. Mandel
TAFT STETTINIUS & HOLLISTER LLP
200 Public Sq., Suite 3500
Cleveland, OH 44114
Attorneys for Defendants

Matthew W. Nakon
Richard Panza
Malorie A. Alverson
WICKENS HERZER PANZA COOK & BATISTA
35765 Chester Road
Avon, OH 44011-1262
Attorneys for Defendants

One of the attorneys for Lexington Insurance Company

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON'S BROS., INC. et al.,

Plaintiff,

v.

OBERLIN COLLEGE, et al.,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN MIRALDI

LEXINGTON INSURANCE COMPANY'S COMPLAINT IN INTERVENTION

LEXINGTON INSURANCE COMPANY,
175 Water Street, 18th Floor, New York, NY,
10038,

Plaintiff in Intervention,

v.

OBERLIN COLLEGE aka OBERLIN COLLEGE AND CONSERVATORY,
c/o Carmen Twillie Ambar, president
173 Lorain St.
Oberlin, OH 44074

MEREDITH RAIMONDO,
256 Shipherd Cir.
Oberlin, OH 44074,

Defendants in Intervention.

Intervenor Lexington Insurance Company ("Lexington"), for its Complaint In Intervention, pursuant to Ohio R. Civ. P. 24(C), states as follows:

THE PARTIES

1. Lexington is an insurance corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Boston, Massachusetts. Lexington

is authorized to and is conducting business in the State of Ohio.

2. Upon information and belief, Oberlin College, aka Oberlin College and Conservatory ("Oberlin"), is a corporation incorporated by special legislative act and located at 173 W. Lorain Street, Oberlin, OH 44074.

3. Upon information and belief, Meredith Raimondo is an Ohio resident and is the Vice President and Dean of Students of Oberlin.

JURISDICTION AND VENUE

4. This Complaint is within the subject matter jurisdiction of this Court, a court of general jurisdiction.

5. This Court has personal jurisdiction over Oberlin because Oberlin is a citizen of the State of Ohio.

6. This Court has personal jurisdiction over Ms. Raimondo because Ms. Raimondo is a citizen of the State of Ohio.

7. Venue is appropriate pursuant to Ohio Rule Civ. P. 3(B) because the claims in this complaint arose out of incidents and transactions that occurred in Lorain County, Ohio.

BACKGROUND

A. The Lawsuit

8. On November 7, 2017, plaintiffs filed a complaint against Oberlin and Ms. Raimondo, Oberlin's Vice President and Director of Students, captioned *Gibson et al. v. Oberlin College a/k/a Oberlin College and Conservatory,* Lorain County Court of Common Pleas, Case No. 17CV193761 ("lawsuit").

9. The complaint seeks compensation for defendants' alleged interference with plaintiffs' bakery ("Gibson's") following a claimed attempt by Oberlin students to purchase alcohol with false identification.

10. More specifically, plaintiffs allege through the lawsuit that three African-American Oberlin students attempted to buy alcohol at Gibson's with false identification on November 9, 2016. The claimed incident resulted in a purported physical altercation with Allyn W. Gibson, which defendants allegedly maintained was racially motivated. Thereafter, defendants purportedly encouraged students and the community to boycott Gibson's.

11. As part of its purported campaign against Gibson's, Oberlin employees and students allegedly protested outside the bakery where they purportedly circulated flyers accusing Gibson's of being a racist establishment and encouraged the public "shop elsewhere."

12. The complaint in the lawsuit further alleges that similar posters were displayed in Oberlin's Student Union.

13. The complaint in the lawsuit further alleges defendants forced Bon Appetit Management Company ("Bon Appetit"), one of the college's food service contractors, to cancel its contract with Gibson's.

14. Plaintiffs in the lawsuit allege that the Oberlin Police Department explained to Oberlin that out of the 40 adults arrested at the bakery, only six were African-American. The complaint further alleges that Oberlin consciously ignored these purported facts and allegedly acted with "intentional disregarded of the truth" in purportedly continuing to publicly maintain that Gibson's is a racist establishment.

15. Based on these allegations, among others, plaintiffs seek to recover compensatory and punitive damages from Oberlin and Ms. Raimondo for the following claims: libel, tortious interference with business relationships, tortious interference with contract,[1] intentional infliction of emotional distress ("IIED"), and trespass. In addition, Plaintiffs seek compensatory damages

[1] The claims for tortious interference with business relationships and tortious interference with contract are collectively be referred to as the "tortious interference claims."

from Oberlin for a claim of negligent hiring.

B. The Lexington Policy

16. Lexington issued a Commercial Umbrella Liability policy to College Risk Purchasing Group, Inc., under number 013136482 for the period of September 1, 2016 to September 1, 2017. Oberlin is a named insured under the Lexington policy by endorsement. The Lexington policy provides in relevant part:

SECTION I – INSURING AGREEMENT – COMMERCIAL UMBRELLA LIABILITY

A. We will pay on behalf of the "Insured" those sums in excess of the "Retained Amount" that the "Insured" becomes legally obligated to pay as damages because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies. The amount we will pay is limited as described in SECTION IV – LIMITS OF INSURANCE.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II – DEFENSE AND SUPPLEMENTARY PAYMENTS.

B. This policy applies, only if:

1. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
2. The "bodily injury" or "property damage" occurs during the "policy period";
3. The "personal and advertising injury" is caused by offense arising out of your business, but only if the offense was committed in the "coverage territory" during the "policy period"; and

...

SECTION III – EXCLUSIONS

This insurance does not apply to:

A. Expected or Intended Injury

"Bodily injury," or "property damage" expected or intended from the standpoint of the "Insured." This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

...

Z. Other Personal and Advertising Injury

"Personal and advertising injury":

1. Caused by or at the direction of the "Insured" with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

2. Arising out of oral or written publication of material, if done by or at the direction of the "Insured" with knowledge of its falsity.

...

SECTION V – DEFINITIONS

...

P. "Occurrence" means;

1. As respects "bodily injury" or "property damage", an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general harmful conditions will be deemed to arise out of one "occurrence".

2. As respects "personal and advertising injury", an offense arising out of your business that causes "personal and advertising injury". All damages that arise of from the same, related or repeated injurious material or act will be deemed to arise out of one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants.

Q. "Other insurance" means a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy.

...

W. "Retained Amount" means:

1. The total applicable limits of "scheduled underlying insurance" (plus any "Self-Insured retention applicable thereto) and any applicable "other insurance" providing coverage to the "Insured"; or

...

* * *

LAW GOVERNING INSURABILITY OF PUNITIVE OR EXEMPLARY DAMAGES ENDORSEMENT

(MOST FAVORABLE JURISDICTION)

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

The following condition is added to **SECTION VI. CONDITIONS:**

LAW GOVERNING INSURABILITY OF PUNITIVE OR EXEMPLARY DAMAGES

Punitive or exemplary damages that are awarded against an "Insured" in a judgment that also awards compensatory damages covered by this policy shall be covered where insurable under

applicable law, subject to all other terms, conditions, definitions and exclusions of this policy (including, but not limited to Exclusion W.).

The law of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall govern the interpretation of coverage for such damages under this policy, provided that such jurisdiction either:

1. Has a substantial relationship to:
   a. the "Insured",
   b. the suit in which the punitive or exemplary damages were awarded, or
   c. the conduct or loss for which punitive or exemplary damages were imposed or awarded, or
2. Is the State or Commonwealth in which we are incorporated or we have our principal place of business, or is where this insurance contract was made.

Coverage for such punitive or exemplary damages shall be subject to and not in addition to the Limits of Insurance set forth in Item 3. of the Declarations.

...

With respect to punitive or exemplary damages that would not have been insurable under this policy without the Law Governing Insurability of Punitive or Exemplary Damages Endorsement, the "Self-Insured Retention" is amended to mean the amount of the applicable limits of all policies shown in the "scheduled underlying insurance" that would have applied to such damages if they were not deemed to be uninsurable under such policies shown in the "scheduled underlying insurance."

* * *

17. The Lexington policy applies to covered claims in excess of the "Retained Amount," which is defined as "Scheduled Underlying Insurance" and "Other Insurance."

18. A commercial general liability policy issued by College Risk Retention Group, Inc. ("CRRG") under number GL090116 represents "Scheduled Underlying Insurance." The CRRG policy has a limit of $1,000,000 per occurrence.

19. The Lexington policy defines "Other Insurance" as "a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy."

20. An Educators Legal Liability policy issued by United Educators ("UE") to Oberlin under number ELS201600026000 for the period June 1, 2016 to June 1, 2017 provides coverage for the libel claim and thus constitutes "Other Insurance" as defined by the Lexington

policy. The UE policy has a limit of $25,000,000 per claim and in the aggregate. Further, the UE policy provides $1,000,000 in coverage for punitive damages where insurable by law.

21. The Lexington policy does not provide coverage for the tortious interference claims because such claims are for economic losses that are not embraced by the terms of the policy. Thus, to the extent the jury in this action awards damages based on the tortious interference claims, Lexington would have no duty to indemnify such damages, whether compensatory or punitive.

22. The Lexington policy does not provide coverage for the IIED claim because the claim is inherently non-accidental in nature and thus does not implicate an "occurrence" under the Lexington policy. Thus, to the extent the jury in this action awards damages based on IIED, Lexington would have no duty to indemnify such damages, whether compensatory or punitive.

23. The Lexington policy does not provide coverage for the trespass claim because the claim is inherently non-accidental in nature and thus does not implicate an "occurrence" under the Lexington policy. Further, plaintiffs do not allege the purported trespass was "committed by or on behalf of the owner, landlord or lessor" as required under the terms of the Lexington policy to constitute "personal and advertising injury." Thus, to the extent the jury in this action awards damages based on the trespass claim, Lexington would have no duty to indemnify such damages, whether compensatory or punitive.

24. The Lexington policy may potentially provide coverage in relation to the libel claim, subject to proper satisfaction of the "Retained Amount," as defined in the Lexington policy, but exclusions may apply to preclude coverage. In particular, the Lexington policy excludes coverage for "personal and advertising injury" that is "[c]aused by or at the direction of the 'Insured' with the knowledge that the act would violate the rights of another and would

inflict 'personal and advertising injury.'" Further, coverage for "personal and advertising injury" is excluded under the Lexington policy to the extent liability arises "out of oral or written publication of material, if done by or at the direction of the 'Insured' with knowledge of its falsity."

25. To the extent that the jury in this action finds that the defendants are liable to plaintiffs for the libel claim, but that the defendants knew (a) that the acts giving rise to such liability would violate the rights of another and inflict injury, or (b) that the statement(s) giving rise to the claim were false, Lexington would have no duty to indemnify damages awarded for the libel claim.

26. The UE policy potentially provides coverage for punitive damages, but only in certain circumstances. If the jury in this action were to award punitive damages based on the defendants' own allegedly malicious conduct, coverage for such punitive damages appear to be precluded under Ohio law, and thus also under the UE policy. But, if the jury in this action were to award punitive damages based on the defendants' authorization, participation in, or ratification of an agent's malicious acts, coverage for punitive damages may be implicated under the UE policy.

27. If the UE policy provides any coverage for any damages awarded in relation to the libel claim, the Lexington policy would not respond to any such damages unless and until the UE policy properly exhausts. Further, if the jury awards punitive damages covered under the UE policy, the Lexington policy would not potentially respond to any such award unless and until the UE limit relative to punitive damages properly exhausts.

28. Lexington submits this Complaint in Intervention for the limited purpose of intervening in order to submit interrogatories and instructions to the jury to determine the

allocation of any damages awarded and the factual bases for any such damages, as Oberlin and Ms. Raimondo did not express agreement to do so despite repeated requests.

PRAYER FOR RELIEF

WHEREFORE, Lexington asks that the Court:

A. Allow Lexington to submit interrogatories and instructions to the jury in this action; and,

B. Grant Lexington any and all further relief that this Court may deem equitable and just.

Respectfully submitted,

Patrick Fredette (0080523)
Jennifer Paonessa (008314)
Christopher Ryan (0084607)
McCormick Barstow LLP
312 Walnut Street, Suite 1050
Cincinnati, Ohio 45202
Telephone: (513) 762-7520
Fax: (513) 762-7521
patrick.fredette@mccormickbarstow.com
jennifer.paonessa@mccormickbarstow.com
christopher.ryan@mccormickbarstow.com

CERTIFICATE OF SERVICE

The undersigned counsel for Lexington Insurance Company, hereby certifies that a copy of the foregoing was served U.S. Mail on this 1st day of May, 2019, to the following:

Lee E. Plakas
Brandon W. McHugh
Jeananne M. Ayoub
TZANGAS PLAKAS MANNOS LTS.
220 Market Avenue South
Eighth Floor
Canton, OH 44702
Attorneys for Plaintiffs

Terry A. Moore
Owen J. Rarric
Matthew W. Onest
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, OH 44735-6963
Attorneys for Plaintiffs

Ronald D. Holman, II
Julie A. Crocker
William A. Doyle
Cary M. Snyder
Josh M. Mandel
TAFT STETTINIUS & HOLLISTER LLP
200 Public Sq., Suite 3500
Cleveland, OH 44114
Attorneys for Defendants

Matthew W. Nakon
Richard Panza
Malorie A. Alverson
WICKENS HERZER PANZA COOK & BATISTA
35765 Chester Road
Avon, OH 44011-1262
Attorneys for Defendants

One of the attorneys for Lexington Insurance Company

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

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

Plaintiff,

v.

OBERLIN COLLEGE, *et al.*,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN MIRALDI

LEXINGTON INSURANCE COMPANY'S PROPOSED JURY INTERROGATORIES

Defendants.

Below you have been given written questions called interrogatories. You must answer them in writing, starting with the first question and proceed as instructed. A question is answered when at least six (6) of the jurors agree. All who agree with the designated answer must sign. **If six (6) jurors cannot agree on an answer, please report this to the Court.** This instruction applies to **ALL** interrogatories.

INTERROGATORY NO. 1

A. Did you award plaintiffs compensatory damages against the defendant Oberlin College aka Oberlin College and Conservatory ("Oberlin")?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," skip to the first question of "Interrogatory No. 5" on page 9.

B. Please state the amount of compensatory damages awarded against Oberlin with respect to each cause of action:

Libel: _____

Tortious Interference with Business Relationships: _____

Tortious Interference with Contract: _____

Intentional Infliction of Emotional Distress: _____

Trespass: _____

Negligent Hiring, Supervision or Retention: _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 2

A. Did you find that Oberlin is liable to the Plaintiffs for libel?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," skip to the first question of "Interrogatory No. 3" on page 5.

B. Did Oberlin make or direct to be made any false or misleading statement of fact with knowledge that the statement was false or misleading?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

B. Did Oberlin act or direct anyone to act in a way that Oberlin knew would violate the Plaintiffs' rights?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

C. If you answered "Yes," to the preceding question, did Oberlin act or direct anyone to act in a way that Oberlin knew would cause damage to the Plaintiffs?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 3

A. Did you award plaintiffs punitive damages against Oberlin?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," skip to the first question of "Interrogatory No. 5" on page 8.

B. Please state the amount of punitive damages awarded against Oberlin with respect to each cause of action:

Libel: _____

Tortious Interference with Business Relationships: _____

Tortious Interference with Contract: _____

Intentional Infliction of Emotional Distress: _____

Trespass: _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 4

A. Did you award plaintiffs punitive damages against Oberlin for the libel claim?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," skip to the first question of "Interrogatory No. 5" on page 8.

B. Did you award the punitive damages because Oberlin's actions demonstrated actual malice?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

B. Did you award the punitive damages because Oberlin's actions demonstrated aggravated or egregious fraud?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

C. Did you award the punitive damages because Oberlin knowingly authorized, participated in, and/or ratified the malicious actions or omissions of Oberlin's agent?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO.5

A. Did you award plaintiffs compensatory damages against Meredith Raimondo?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," you have completed the Interrogatories and do not need to answer any further questions.

B. Please state the amount of compensatory damages awarded against Ms. Raimondo with respect to each cause of action:

Libel: _____

Tortious Interference with Business Relationships: _____

Tortious Interference with Contract: _____

Intentional Infliction of Emotional Distress: _____

Trespass: _____

Negligent Hiring, Supervision or Retention: _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

C. With respect to each cause of action for which damages were awarded, please state whether Ms. Raimondo was acting with respect to her duties as the Vice President and Dean of Students of Oberlin:

Libel: YES _____ NO _____

Tortious Interference with Business Relationships: YES _____ NO _____

Tortious Interference with Contract: YES _____ NO _____

Intentional Infliction of Emotional Distress: YES _____ NO _____

Trespass: YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 6

A. Did you find that Ms. Raimondo is liable to the Plaintiffs for libel?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," skip to the first question of "Interrogatory No. 7" on page 12.

B. Did Ms. Raimondo make or direct to be made any false or misleading statement of fact with knowledge that the statement was false or misleading?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

C. Did Ms. Raimondo act or direct anyone to act in a way that Ms. Raimondo knew would violate the rights of Plaintiffs?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

D. If you answered "Yes," to the preceding question, did Ms. Raimondo act or direct anyone to act in a way that Ms. Raimondo knew would cause damage to the Plaintiffs?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 7

A. Did you award plaintiffs punitive damages against Ms. Raimondo?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," you have completed the Interrogatories and do not need to answer any further questions.

B. Please state the amount of punitive damages awarded against Ms. Raimondo with respect to each cause of action:

Libel: _____

Tortious Interference with Business Relationships: _____

Tortious Interference with Contract: _____

Intentional Infliction of Emotional Distress: _____

Trespass: _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

INTERROGATORY NO. 8

A. Did you award plaintiffs punitive damages against Ms. Raimondo for the libel claim?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

If you answered "Yes," proceed to the following question. If you answered "No," you have completed the Interrogatories and do not need to answer any further questions.

B. Did you award the punitive damages because Ms. Raimondo's actions demonstrated actual malice?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

B. Did you award the punitive damages because Ms. Raimondo's actions demonstrated aggravated or egregious fraud?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

Proceed to the following question.

C. Did you award the punitive damages because Ms. Raimondo knowingly authorized, participated in, and/or ratified the malicious actions or omissions of Ms. Raimondo's agent?

YES _____ NO _____

_____ _____

_____ _____

_____ _____

_____ _____

You have completed the Interrogatories and do not need to answer any further questions.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

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

Plaintiff,

v.

OBERLIN COLLEGE, *et al.*,

Defendants.

CASE NO. 17CV193761

JUDGE JOHN MIRALDI

LEXINGTON INSURANCE COMPANY'S PROPOSED JURY INSTRUCTIONS

Defendants.

PROPOSED JURY INSTRUCTION NO. 1

Knowledge

1. **DEFINITION.**

A person has knowledge of circumstances when the person is aware that such circumstances probably exist. A person has knowledge of the existence of a particular fact if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

Authorities:

Ohio Rev. Code Ann. § 2901.22

PROPOSED JURY INSTRUCTION NO. 2

Actual Malice

1. **DEFINITION**

"Actual malice" necessary for an award of punitive damages is (1) a state of mind characterized by hatred, ill will, or a spirit of revenge; or (2) a conscious disregard for the rights and safety of another person that has a great probability of causing substantial harm.

Authorities:

Preston v. Murty, 32 Ohio St.3d 334 (1987); *Moskovitz, Exr., v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638 (1994)

PROPOSED JURY INSTRUCTION NO. 3

Aggravated or Egregious Fraud

1. **DEFINITION**

Fraud is "aggravated" if it is accompanied by the existence of malice or ill will. Fraud is "egregious" if the fraudulent wrongdoing is particularly gross or malicious.

Authorities:

Charles R. Combs Trucking, Inc. v. Internatl. Harvester Co., 12 Ohio St.3d 241 (1984); *Logsdon v. Graham Ford Co.*, 54 Ohio St.2d 336 (1978).