IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,	)	**CASE NO. 17CV193761**
	)	
Plaintiffs,	)	**JUDGE JOHN R. MIRALDI**
	)	
v.	)	
	)	**DEFENDANTS' MOTION TO CAP**
OBERLIN COLLEGE, et al.,	)	**COMPENSATORY AND PUNITIVE**
	)	**DAMAGES PURSUANT TO OHIO**
Defendants.	)	**REVISED CODE CHAPTER 2315**

Pursuant to Ohio Revised Code Sections 2315.18(B)(2) and 2315.21(D)(2)(a), Defendants Oberlin College ("Oberlin College" or "College") and Dr. Meredith Raimondo ("Dean Raimondo," and collectively with the College, the "Defendants") move this Court to cap the compensatory and punitive damages awarded to Plaintiffs.

BACKGROUND

On June 7, 2019, the jury awarded Plaintiffs a total compensatory damages award of $11,074,500. This award was allocated to each Plaintiff as follows:

- David Gibson's total compensatory damages: $5,800,000
  - Economic damages: $1,800,000
  - **Noneconomic damages: $4,000,000**

- Allyn W. Gibson's total compensatory damages: $3,000,000
  - Economic damages: $0
  - **Noneconomic damages: $3,000,000**

- Gibson Bros., Inc.'s total compensatory damages: $2,274,500
    - Economic damages: $2,274,500
    - **Noneconomic damages: $0**

Based on the above, Plaintiff David Gibson was awarded $4,000,000 of noneconomic damages, and Plaintiff Allyn W. Gibson was awarded $3,000,000 of noneconomic damages. As argued *infra*, David Gibson's noneconomic damages award should be capped at $350,000, and Allyn W. Gibson's noneconomic damages award should be capped at $250,000, thus reducing the total compensatory damages award from $11,074,500 to **$4,674,500**.

On June 13, 2019, the jury awarded Plaintiffs a total punitive damages award of $33,223,500. This award was allocated to each Plaintiff as follows:

- David Gibson's total punitive damages: $17,500,000
- Allyn W. Gibson's total punitive damages: $8,750,000
- Gibson Bros., Inc.'s total punitive damages: $6,973,500

As argued *infra*, Plaintiffs' punitive damages award should be capped at **$9,349,000**.

ARGUMENT

I. Plaintiffs' Compensatory Damages Award Should be Capped at $4,674,500.

Pursuant to R.C. 2315.18(B)(2), the amount of noneconomic damages that a plaintiff may recover shall not exceed (a) $250,000 or (b) three times the plaintiff's economic damages, which is subject to a maximum of $350,000 per plaintiff:

> [T]he amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action under this section to recover damages for injury or loss to person or property shall not exceed the greater of **two hundred fifty thousand dollars or an amount that is equal to three times the economic loss**, as determined by the trier of fact, of the plaintiff in that tort action to a maximum of **three hundred fifty thousand dollars for each plaintiff** in that tort action . . . .

(emphasis added). Put simply, when a plaintiff is awarded only noneconomic damages, that plaintiff's noneconomic damages award must be capped at $250,000. And when a plaintiff is

awarded economic **and** noneconomic damages, that plaintiff's noneconomic damages award must be capped at $350,000.

Here, Plaintiff David Gibson was awarded both economic **and** noneconomic damages. Thus, his noneconomic damages award of $4,000,000 must be capped at $350,000. Separately, Plaintiff Allyn W. Gibson was awarded noneconomic damages, but not economic damages. Thus, his noneconomic damages award of $3,000,000 must be capped at $250,000. Accordingly, the total noneconomic damages award of $7,000,000 awarded to Plaintiffs David Gibson and Allyn W. Gibson must be capped at $600,000, meaning the jury's total compensatory damages award of $11,074,500 must be capped at **$4,674,500**.

A. The Court must reject any effort by Plaintiffs to increase their noneconomic damages.

Defendants expect Plaintiffs to make two arguments in an attempt to increase their recovery of noneconomic damages: (1) the noneconomic damages caps under R.C. 2315.18(B)(2) apply *per claim*; and (2) Plaintiff David Gibson suffered multiple "occurrences" of defamation via the Flyer and the Student Senate Resolution. Neither of these arguments is supported by the language of R.C. 2315.18 or Ohio case law.

1. The noneconomic damages caps under R.C. 2315.18(B)(2) apply per lawsuit, not per claim.

Plaintiffs and this Court will not find the words "per claim" or their equivalent in R.C. 2315.18(B)(2). This Court may not read any such language into the statute. *State v. Vanzandt*, 142 Ohio St.3d 223, 2015-Ohio-236, 28 N.E.3d 1267, ¶ 7, citing *Armstrong v. John R. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237, 990 N.E.2d 568, ¶ 12 ("[a]n unambiguous statute must be applied by giving effect to all of its language, without adding or deleting any words chosen by the General Assembly").

Section 2315.18(B)(2) caps the amount of noneconomic damages to those "recoverable in a **tort action**." The statute defines a "tort action" as a "**civil action** for damages for injury or loss to person or property." R.C. 2315.18(A)(7) (emphasis added). There is only one civil action here: Case # 17CV193761. As such, the caps on noneconomic damages are unaffected by the fact that Plaintiffs prevailed on more than one claim. Thus, any attempt by Plaintiffs to double-dip their noneconomic damages recovery on a "per claim" basis is inconsistent with the plain language of R.C. 2315.18(B)(2) and must be rejected.

2. Publication of an alleged defamatory statement does not constitute an "occurrence" under R.C. 2315.18(B)(2).

Because the jury awarded Plaintiff David Gibson economic damages, under R.C. 2315.18(B)(2), he is entitled to noneconomic damages capped at $350,000. Alternatively, a plaintiff may recover up to a "maximum of five hundred thousand dollars [$500,000] for each **occurrence** that is the basis of that tort action." R.C. 2315.18(B)(2) (emphasis added). The statute defines an "occurrence" as "all claims resulting from or arising out of any one person's **bodily injury**." R.C. 2315.18(A)(5) (emphasis added). The Supreme Court of Ohio has held that "bodily injury" under R.C. 2315.18(A)(5) has a distinct meaning from "an injury or loss to person," which is required for the noneconomic damages cap under R.C. 2315.18(B)(2) to apply. *See Wayt v. DHSC, LLC*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶ 21.[1] Further, in *Simpkins v. Grace Brethren Church of Delaware*, 149 Ohio St.3d 307, 2016-Ohio-8118, 75 N.E.3d 122, ¶¶ 52-57, the Supreme Court of Ohio found that oral and vaginal penetration were the types of "bodily injury" intended by R.C. 2315.18(A)(5).

[1] The *Wayt* Court found that defamation is "a civil action for damages for **injury or loss to person**," meaning the noneconomic damages caps under R.C. 2315.18(B)(2) apply to defamation claims; but as stated *supra*, the *Wayt* Court specifically found that "an injury or loss to person" is different from a "bodily injury." *Wayt* at ¶ 22.

Here, David Gibson has not suffered any "bodily injury" so as to constitute an "occurrence," as defined by R.C. 2315.18(A)(5) and Ohio courts. Accordingly, David Gibson is not entitled to such an increased noneconomic damages award.

II. Plaintiffs' Punitive Damages Award Should Be Capped At $9,349,000.

Pursuant to R.C. 2315.21(D)(2)(a), a court cannot enter a judgment for punitive damages greater than twice the amount of compensatory damages to which a plaintiff is entitled: "The court shall not enter judgment for punitive or exemplary damages **in excess of two times the amount of the compensatory damages** awarded to the plaintiff . . . ." (emphasis added). Here, Plaintiffs are only entitled to compensatory damages in an amount of $4,674,500. This figure multiplied by two equals $9,349,000. Accordingly, Plaintiffs' punitive damages award of $33,233,500 must be capped at **$9,349,000**.

Defendants expect Plaintiffs to rely on *Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, to argue they are entitled to a punitive damages award that is twice the **uncapped** compensatory award of $11,074,500, rather than twice the **capped** compensatory award of $4,674,500. Notwithstanding the fact that *Faieta* is not binding on this Court, Plaintiffs' position will contravene the clear legislative intent in enacting mandatory caps on both noneconomic and punitive damages.

"In construing a statute, a court's paramount concern is the legislative intent in enacting the statute." *Rice v. CertainTeed Corp.*, 84 Ohio St.3d 417, 419 (1999), citing *State ex rel. Richard v. Bd. of Trustees of Police*, 69 Ohio St.3d 409, 411, 632 N.E.2d 1292 (1994). "To this end, [a court] must first look to the statutory language and **the purpose to be accomplished**." (Emphasis added) *Id.* (emphasis added). Here, the history of the Ohio General Assembly in enacting mandatory caps on both noneconomic compensatory and punitive damages, which the trial and appellate courts in *Faieta* did not consider, shows that the "purpose to be accomplished" through

the tort reform enacted under the same Senate bill was to limit the recovery of punitive damages to the **capped** compensatory award.

In 2004, the Ohio General Assembly described the need for caps on noneconomic compensatory damages: "[w]hile pain and suffering awards are inherently subjective, it is believed that this inflation of noneconomic damages is partially due to the improper consideration of evidence of wrongdoing in assessing pain and suffering damages. Inflated damage awards create an improper resolution of civil justice claims." 125th General Assembly, Statement of Findings and Intent, S.B. 80, § 3(A)(6)(d)-(e).[2] As to the punitive damages cap under R.C. 2315.21(D)(2)(a), the Ohio legislature explained in the same bill that "[r]eform to the punitive damages law in Ohio is **urgently needed to restore balance, fairness, and predictability to the civil justice system**." *Id.* at § 3(A)(4)(a) (emphasis added). The legislature further reasoned that "[t]he absence of a statutory ceiling upon recoverable punitive or exemplary damages in tort actions has resulted in occasional multiple awards of punitive or exemplary damages that **have no rational connection to the wrongful actions or omissions of the tortfeasor**." *Id.* at § 3(A)(4)(b) (emphasis added).

Three years later, in 2007, the Supreme Court of Ohio further opined on the reason for enacting noneconomic damages caps:

> Viewing these findings as a whole, we conclude that R.C. 2315.18 bears a real and substantial relation to the general welfare of the public. The General Assembly reviewed evidence demonstrating that uncertainty relating to the existing civil litigation system and rising costs associated with it were harming the economy. **It noted that noneconomic damages were inherently subjective and thus easily tainted by irrelevant considerations. The implicit, logical conclusion is that the uncertain and subjective system of evaluating noneconomic damages was contributing to the deleterious economic effects of the tort system**.

[2] Conversely, there is no statutory cap on the amount of compensatory damages for economic loss that may be awarded to a plaintiff. R.C. 2315.18(B)(1).

Arbino v. Johnson & Johnson, 116 Ohio St.3d 468, 479 (2007) (emphasis added).

The absurdity of Plaintiffs' expected theory is best exemplified through the following hypothetical. First, a jury awards a plaintiff compensatory damages in the amount of $1 billion, consisting entirely of noneconomic damages. Next, the jury awards the plaintiff punitive damages in the amount of $2 billion. Thereafter, the court imposes the noneconomic damages caps under R.C. 2315.18(B)(2), thereby capping the $1 billion compensatory damages award to $250,000. However, under Plaintiffs' theory, because the punitive damages cap is based on the **uncapped** compensatory award, the jury's $2 billion punitive damages award is permissible and requires no further limitation under R.C. 2315.21(D)(2)(a).

The Ohio legislature did not intend such excessive punitive damages awards that have no "rational connection" to the underlying conduct and do nothing to "restore balance, fairness, and predictability to the civil justice system." Statement of Findings and Intent, S.B. 80, § 3(A)(4)(a)-(b). Under Plaintiffs' expected theory, there would effectively be no limit to the amount of punitive damages a party could recover, which the legislature expressly sought to avoid, and the purpose of the punitive damages cap would be eviscerated. If so, how could a defendant ever properly and accurately predict its exposure in litigation? How could such an excessive outcome ever be construed as balanced or fair? There can be no possible "rational connection" between a $2 billion punitive damages award towering over a $250,000 compensatory damages award. Plaintiffs' theory must be rejected.[3] Accordingly, this Court should cap Plaintiffs' punitive damages at **$9,349,000.**

[3] Courts have applied punitive damages caps based on the already-capped compensatory damages amount. *See, e.g., Lira v. Davis*, 832 P.2d 240, 243-246 (Colo. 1992) (holding that punitive damage cap is based on the capped compensatory damage award, as consistent with the legislature's intent in tort reform legislation); *James v. Coors Brewing Co.*, 73 F.Supp.2d 1250, 1254 (D.Colo. 1999) (same).

CONCLUSION

Defendants request that the Court apply the statutory caps on Plaintiffs' compensatory and punitive damages awards. Pursuant to R.C. 2315.18(B)(2), Plaintiffs' noneconomic damages of $7,000,000 must be capped at $600,000, meaning their compensatory damages award must be reduced from $11,074,500 to **$4,674,500**. Pursuant to R.C. 2315.21(D)(2)(a), Plaintiffs' punitive damages of $33,233,500 must be capped at **$9,349,000**. Thus, Plaintiffs' total compensatory and punitive damages award of $44,308,000 must be capped at **$14,023,500**.

Respectfully submitted,

/s/ Julie A. Crocker

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served this 21st day of June 2019, via e-mail, pursuant to Civ.R. 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

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